

1990

In the Matter of the Estate of Edward Miller
Grimm, Deceased. Maxine Tate Grimm,
individually and as Supervised Personal
Representative of the Estate of Edward Miller
Grimm; Linda Grimm; Edward Miller Grimm II;
and E. Lavar Tate, as Supervised Personal
Representative of the Estate of Edward Miller
Grimm v. Ethel Grimm Roberts, Rex Roberts,
Juanita Grimm Morris and Juanita Kegley Grimm :
Petition for Writ of Certiorari

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law
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900082

IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate of)
EDWARD MILLER GRIMM,)

Deceased.)

MAXINE TATE GRIMM, individually)
and as Supervised Personal)
Representative of the Estate of)
Edward Miller Grimm; LINDA)
GRIMM; EDWARD MILLER GRIMM II;)
and E. LAVAR TATE, as Supervised)
Personal Representative of the)
Estate of Edward Miller Grimm,)

Plaintiffs-Petitioners,)

vs.)

ETHEL GRIMM ROBERTS, REX ROBERTS,)
JUANITA GRIMM MORRIS, and)
JUANITA KEGLEY GRIMM,)

Defendants-Respondents.)

NO. **900082**

COURT OF APPEALS
NO. 880708-CA

APPENDIX

PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

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FILED

FEB 20 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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Tab 1

IN THE UTAH COURT OF APPEALS

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In the Matter of the Estate of)
Edward Miller Grimm,)
Deceased.)

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Edward Miller Grimm; Linda)
Grimm; Edward Miller Grimm II;)
and E. LaVar Tate, as)
Supervised Personal)
Representative of the Estate)
of Edward Miller Grimm,)

Plaintiffs and Appellants,)

v.)

Ethel Grimm Roberts, Rex)
Roberts, Juanita Grimm Morris,)
and Juanita Kegley Grimm,)

Defendants and Respondents.)

DEC 29 1989
Mary J. Noonan
Mary J. Noonan
Clerk of the Court
Utah Court of Appeals

AMENDED OPINION
(For Publication)

Case No. 880708-CA

Third District, Tooele County
The Honorable John A. Rokich

Attorneys: Daniel L. Berman and Peggy A. Tomsic, Salt Lake City,
for Appellants
Harold G. Christensen, R. Brent Stephens, and Craig S.
Cook, Salt Lake City, for Respondents

Before Judges Billings, Garff, and Croft¹.

CROFT, Judge:

Plaintiffs (appellants) appeal from a final judgment of the
district court entered April 25, 1986. Defendants (respondents)

1. Bryant H. Croft, Senior District Judge, sitting by special
appointment pursuant to Utah Code Ann. § 78-3-24(10)(Supp. 1989).

cross-appeal from that portion of the judgment denying them attorney fees.

Facts

This litigation had its origin in the probate of two wills referred to as the Philippine will and the non-Philippine will, both executed on January 23, 1959, by Edward Miller Grimm² ("Grimm"), who died on November 27, 1977. Grimm, a United States citizen, resided mainly in the Philippine Islands, although he had a secondary residence in Tooele County, Utah, and extensive business and property holdings both in the Far East and in the western United States.

At the time of his death, Grimm was survived by his wife, Maxine Tate Grimm ("Maxine"), whom he married on June 25, 1947, and their two children, Edward Miller Grimm II ("Pete") and Linda Grimm ("Linda"). Maxine, Pete, and Linda are the appellants in this action. Grimm was divorced from his first wife, Juanita Kegley Grimm ("Juanita"), in Reno, Nevada, by a decree entered June 2, 1947. Two daughters were born of this marriage, Ethel Grimm Roberts ("Ethel") and Juanita Grimm Morris ("Nita"). Nita, Ethel, and Ethel's husband, Rex Roberts, are the respondents in this action.

The Philippine will governed all of Grimm's property situated in the Philippines. It named Maxine, Charles Parsons ("Parsons"), and Byron S. Huie ("Huie") as co-executors, noting that Parsons and Huie both resided in Manila. It declared his Philippine properties community property, and directed the executors to deliver to Maxine that portion thereof which under the Philippine laws constituted her share of the community property. It also bequeathed to Maxine his cars, furniture and furnishings, musical instruments, jewelry and clothing situated in the Philippines at the time of his death. He named his four children, Pete, Linda, Ethel and Nita, and directed that the residue of his Philippine estate be distributed according to Philippine "legitimate" or compulsory heir law. This division resulted in Ethel and Nita each being entitled to 3.7% of the

2. In January 1966, Grimm executed codicils to both wills, the provisions of which related to disposition of his property in the event he and Maxine, or they, Pete and Linda, should all die in a common disaster. Such did not occur and the codicils are not relevant to the issues of this case.

Philippine estate. As to that portion of his Philippine estate over which he had the power and freedom of testamentary disposition under Philippine law, he bequeathed 16% to two sisters and a brother and 84% to Maxine, Linda, and Pete in equal shares.

The non-Philippine will purported to dispose of his property, both real and personal, not situated in the Philippines. Under this will, Maxine received all real property located outside the Philippines. Grimm bequeathed the remainder of his non-Philippine estate 50% to Maxine and 25% to each of Linda and Pete. Grimm in his will stated he was purposely making no provision for Nita and Ethel, because he had provided for each of them in a separate will disposing of "his Philippine property." This will named Maxine and E. LaVar Tate ("Tate") as co-executors.

Both wills contained the following spendthrift clause:

No beneficiary of my estate shall have any right to alienate, encumber, or hypothecate his or her interest in said estate or the income therefrom, nor shall such interest of any beneficiary be subject to claims of his or her creditors or liable to attachment, execution, or other process of law.

On July 19, 1977, Grimm executed a trust agreement naming Pete as trustee. We discuss the details of this trust when dealing with its legal effect. In August of 1977, Grimm executed 42 assignments of property interests to Pete "as trustee."

After Grimm's death, the relations between the two branches of his family became strained, due in part, at least, to the emergence of the trust agreement. Lawyers were retained by both factions, and conflicts, including tax issues, arose that needed resolution.³ Ethel, under proceedings initiated on December 29, 1977 in Philippine court, had herself appointed special administratrix, alleging that Grimm had died intestate. This appointment became another source of conflict among the parties.

3. One such question related to the validity of Grimm's 1947 Nevada divorce from Juanita and hence the validity of his marriage to Maxine. The record discloses that Grimm commenced the Nevada divorce action but Juanita appeared, answered, and counterclaimed for divorce, and was in fact awarded the decree of divorce from Grimm.

Finally, after extensive and continuous negotiations, a Family Settlement Agreement ("FSA") was executed on April 25, 1978 by Maxine, Linda, and Pete as First Parties and Juanita, Nita, and Ethel as Second Parties.

The FSA consisted of two documents: the Agreement and a Supplemental Memorandum. The Agreement provided that Grimm's estate included all property owned by Grimm at the time of his death and all property that Maxine had or claimed to have under any community property laws; that from the estate there was to be set apart a "marital share" for Maxine as defined therein, which in no event was to be less than \$1,500,000 plus the home in the Philippines and the home in Tooele County. The "net distributable estate" was defined as all of the estate available for distribution after deducting the marital share and all debts of Grimm, claims against the estate, expenses of administration, all inheritance and estate taxes, all bequests to Grimm's sisters and brother, accounting and legal fees incurred in administering the estate, and certain other enumerated items. The net distributable estate was to be shared equally by Linda, Pete, Nita, and Ethel.

The Supplemental Memorandum provided that any property transferred to Pete as trustee under the trust Agreement of July 12, 1977, would be included in the estate of Grimm. It also specifically identified which bank accounts were or were not to be included in the net distributable estate defined in the Agreement.

Litigation over the FSA was triggered when Ethel and Nita filed a petition in the probate case seeking the removal of Maxine and Tate as personal representatives for failure to move the probate proceedings forward. In response, appellants filed a 13-count civil action against respondents on September 10, 1980, to which respondents filed an answer.⁴

In summary, respondents below contended the settlement agreement should be enforced and implemented. Appellants, in twelve claims for relief, generally alleged that the FSA should be declared void, unenforceable, of no effect, and rescinded. Each claim sets forth its own allegations to support that goal. The validity of the FSA was the major issue of this case. However, appellants also claimed intentional infliction of emotional distress.

4. Also on September 10, 1980, appellants filed an 11-count counterclaim to the removal petitions, said 11 counts being identical to 11 of the 13 counts in the civil case. The case as tried involved a consolidation of the two cases.

Trial in the case was set for August 6, 1985. Appellants filed a demand for jury trial, and respondents objected. Respondents contended appellants were not entitled to a jury trial as their claims were equitable. Appellants argued their claims for compensatory and punitive damages, and particularly the one for intentional infliction of emotional distress, asserted legal claims necessitating a jury decision.

The court ruled that plaintiffs would be given the benefit of having a jury, but stated: "So that everybody understands, the court will make the decision as to whether or not the FSA is valid or invalid," and then based upon that decision, if defendants pursue their counterclaim, the plaintiffs could not contend they didn't have the right for the jury to hear all of the defenses "with regard to coercion, distress, and other defenses."

After a ten-day trial in August 1985, the court ruled in favor of respondents and entered its findings of fact and conclusions of law on April 25, 1986.

By its judgment, the court ruled (1) the FSA was a valid and binding agreement; (2) that it was just and reasonable and, to the extent approval of the court was necessary, it was approved by the court; (3) the estate was to be distributed in accordance with the FSA. Respondents' claim for attorneys' fees was denied. This appeal and cross-appeal followed.

Issues on Appeal

We must resolve the following issues on appeal:

1. Whether the court erred in ruling the FSA was a valid and binding agreement;
2. What effect, if any, does the Trust Agreement have upon the validity of the FSA?
3. Could the court approve the FSA under Utah Code Ann. 75-3-1102(c) (1978) without notice to two co-executors of the Philippine will?
4. Were appellants entitled to a jury trial on the affirmative defenses of duress and failure of consideration asserted in response to respondents' counterclaim or upon appellants' claim for damages for intentional infliction of emotional distress?

5. Whether the court's findings and conclusions were fundamentally inadequate.

6. Did the court err in denying an award of attorney fees to respondents?

Validity of the FSA

The fundamental issue presented is whether the FSA is enforceable even though it was not formally approved by the court before appellants' repudiation. Appellants contend that under the "plain language of Utah Code Ann. § 75-3-1101" and "settled authority," the FSA could be repudiated at any time prior to court approval. They claim they repudiated the FSA when they filed their counterclaim to the removal petition filed by Ethel and Nita and their complaint in the civil case. Appellants stress that respondents did not in their pleadings at any time prior to respondents' filing their counterclaim in 1985⁵ seek or receive court approval of the FSA.

Utah Code Ann. § 75-3-1101 (1978) provides:

A compromise of any controversy as to . . . the rights or interests in the estate of the decedent, . . . if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest.

Appellants cite In re Estate of Chasel, 725 P.2d 1345, 1348 (Utah 1986) for the proposition that "compromise agreements authorized by Part 11 of the Probate Code must be approved in formal proceedings." However, the quoted language is clearly

5. Appellants' brief fixes the date of filing of respondents' counterclaim as February 9, 1985, some "four years" after their repudiation of the FSA. The probate case file shows respondents filed their counterclaim on August 10, 1983, together with their amended petition for removal of Maxine and Tate as personal representatives. The civil case file shows a copy of it was not placed in that file until July 29, 1985.

dictum. In Chasel, the court had already approved the settlement agreement. It was only when Chasel, after finding three previously unknown wills, moved to set aside the compromise agreement that the court refused to reopen the issue. The Supreme Court stated he could not reopen the probate because section 75-3-1101 stated that a compromise agreement, "if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto." The court did not decide the issue as to whether or not a FSA not approved by the court was binding upon the parties to the compromise agreement, the issue present here.

We do not read Part 11 of the Probate Code as "authorizing" compromise agreements, but rather as authorizing "approval in formal probate proceedings" of such agreements in the manner set forth in section 75-3-1102, with the result that an approved agreement is binding even on interested persons not party to it. However, section 75-3-1101 does not invalidate an otherwise valid compromise agreement between the parties prior to court approval.

This position is further supported by Utah Code Ann. § 75-3-912:

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions.

This section does not require that such an agreement must be submitted to the probate court for its approval.

The Michigan case of In re Peck's Estate, 323 Mich. 11, 34 N.W.2d 533 (1948) is further authority to support the trial court's conclusion that the settlement agreement was binding between the parties without court approval. In that case, a controversy developed between decedent's widow and the trustee of the estate. The parties entered into a settlement arrangement that was never approved by the probate court. The Supreme Court of Michigan nevertheless enforced the agreement, stating:

It was not necessary to secure the consent of the probate court to the settlement as there were no minors or unknown heirs involved. The court encourages settlements where there is no fraud or mistake and the parties are of age, particularly so where there is a full understanding of the provisions in the settlement and the parties are represented by able counsel.

Id., 34 N.W.2d at 538. The court further found: "[The probate code] does not prevent settlement of controversies by parties legally competent to act in their own behalf."⁶

In further support of respondents' position, an annotation states:

In accord with the general policy of law which favors the compromise of controversies and the avoidance or termination of litigation [citing 15 Am. Jur. 2d, Compromise and Settlement, § 4] it

6. The first sentences of the Michigan statute and Utah Code Ann. § 912 are identical. Michigan did not enact separate statutes such as 1101 and 1102. But the balance of the Michigan statute provides that where interested parties include minors or incapacitated persons, after notice, the probate court may, if the agreement is made in good faith and appears just and reasonable for such persons, direct the representative of the person or interest to sign or enter into the agreement. Utah Code Ann. § 75-3-1101 makes the court approval binding on all parties thereto, including those unborn, unascertained, or who could not be located. Section 75-3-1102 sets out the method to obtain court approval, including parents executing the agreement on behalf of a minor child, and states that after notice, the court may, if it finds the contest or controversy is in good faith and that the effect of the agreement upon interests of persons represented by fiduciaries or other representatives is just and reasonable, make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. The Editorial Board Comment for sections 75-3-1101 and -1102 of the Utah Uniform Probate Code states that they are modeled after section 93 of the Model Probate Code "Comparable legislative provisions have proved quite useful in Michigan." We are persuaded that In re Peck is in point despite slightly different language in the statutes.

is said that the law looks with favor upon an agreement of compromise among members of a family which avoids a will contest or promotes the settlement and distribution of the testator's estate, or, as it is sometimes stated, that such agreements are favorites of the law.⁷

Where all the persons interested in the estate of a testator as heirs or beneficiaries under the will are legally competent to contract, they may settle controversies by agreement and need not seek the approval of the court under the statute.⁸

Section 75-3-1102 does not require court approval for a settlement to be binding upon its signatories. It merely outlines the procedures for securing court approval of a compromise in order for it to bind those not before the court.

Appellants further argue duress as grounds for declaring the FSA to be void. In the weeks preceding execution of the FSA both sides were represented by able counsel. Maxine retained David Salisbury as her attorney while she was in Utah. He was advised by Maxine that while some basic agreements with respondents had been reached in the Philippines, she wanted him to draft the FSA. In correspondence, she said she no longer felt pressured. Salisbury spent many hours negotiating with Donald Holbrook as counsel for respondents. Pete, being in Utah and conferring with Salisbury, was granted a power of attorney by Maxine in order to act on her behalf. The prolonged and extensive assistance of counsel by both sides rebuts appellant's contentions that the FSA was a product of duress. We do not find the trial court's ruling on the issue of duress clearly erroneous.

Appellants also claim lack of consideration as a basis for declaring the FSA void. However, respondents answer that consideration consisted of good faith issues that blocked disposition of Grimm's estate, and which were compromised as part of the FSA: whether the 42 assignments to Pete as trustee of Grimm's assets were valid as to execution and delivery;

7. Annotation, Family Settlement of Testator's Estate, 29 A.L.R.3d 8, 25, 125 (1970).

8. Id. at 125.

whether the Internal Revenue Service and/or the Philippine taxing authorities had all the facts for determining the estate's tax liability, which was finally settled and paid after execution of the FSA; difficulties that confronted the parties in dealing with Parsons (Grimm's partner) and reaching an agreement with him as to the estate's interest in companies in which they were jointly involved, and whether Juanita's divorce from Grimm and Maxine's marriage to him were valid.

We agree that a legitimate controversy as to what assets constitute the Philippine estate existed. Grimm had assigned 42 interests to Pete as trustee one month after the trust agreement was executed, which, if upheld, would have very substantially reduced the Philippine estate to which Ethel and Nita were partially entitled.⁹ Each asset was assigned to Pete "as trustee." No mention was made of the trust agreement executed in July, 1977, nor of any terms and conditions applied to the assets so assigned.

In G. Bogert, Law of Trusts, § 11 at 24 (5th ed. 1973), it is stated:

Even if the intent to create a trust is assumed, it cannot be effective unless certain essential trust elements are properly described, namely, the subject matter, the trust purpose, and the beneficiaries.

In Sundquist v. Sundquist, 639 P.2d 181, 184 (Utah 1981), the Supreme Court said that in the creation of a trust, the trust property must be clearly specified and set aside, and the "essential terms of the trust must be clear enough for the court to enforce the equitable duties that are the sine qua non of a trust relationship."

Standing alone, it is not clear that the properties described in the assignments were intended to become part of the trust estate created by the trust agreement of July, 1977, nor that they are subject to the restriction on alienation contained in the spendthrift clause of that agreement. We have no need to

9. If these assignments were valid, the only assets remaining in the Philippine estate appear to be a receivable from Everett Steamship Company consisting of three payments of \$984,092.31 each, due June 30 in each of the years 1978, 1979, and 1980, and any Philippine real estate.

decide such questions, but only whether they present a good faith issue with respect to the issue of consideration for the FSA.

The Supreme Court of Utah has stated in several cases that consideration for an accord may consist of a compromise of a bona fide dispute which is not necessarily well-founded but is in good faith. E.g., Golden Key Realty, Inc. v. Mantas, 699 P.2d 730 (Utah 1985); Sugarhouse Finance Co. v. Anderson, 610 P.2d 1369 (Utah 1980); Ashton v. Skeen, 85 Utah 489, 39 P.2d 1073 (1935). In Sugarhouse Finance, the court stated:

No completely satisfactory and comprehensive definition of consideration has ever been devised. It is generally agreed, however, that where a promise is supported by the incurrence, on the part of the promisee, of a legal detriment in order to confer a benefit on the promisor, such is sufficient to serve as consideration, thereby rendering the promise legally enforceable. . . . [C]onsideration is often found in the obligor's agreement . . . to surrender the assertion of a legally enforceable right.

610 P.2d at 1372 (footnotes omitted).

The trial court found respondents asserted in good faith the possible invalidity of the trust, possible invalidity of Grimm's divorce, and the effect of the application of Philippine laws; that mutual promises for the sake of family harmony constituted consideration; that the parties were united in dealing with taxing authorities and with Parsons; that the Philippine estate tax was reduced by making it unnecessary for Ethel and Nita to assert that the entire estate (except for real property in Daggett County) was subject to distribution and taxation under Philippine law; and that respondents did not know that whether the claims they asserted were unfounded. We conclude that the trial court's finding of a consideration to support the FSA, from our review of the record, was not clearly erroneous.

In summary, we find the FSA is a valid contract and does not require court approval under sections 75-3-1101 and -1102. We further find that in the absence of illegality, fraud, duress, undue influence, or mistake, it was not subject to

repudiation by appellants. Chasel, 725 P.2d at 1345. The FSA was a compromise of a probate dispute. The issue as to its validity was clearly equitable, and thus for the court to decide. The court's findings will be upheld on appeal unless clearly erroneous. Utah R. Civ. Pro. 52(a); In re Estate of Bartell, 773 P.2d 45 (Utah 1989); Bailey v. Call, 767 P.2d 138, 139 (Utah App. 1989). The record does not support any finding of illegality, fraud, duress, undue influence, or mistake such as would justify repudiation. Furthermore, from a thorough review of the record, we do not find the court's ruling in respondents' favor with respect to appellants claims of fraud, unjust enrichment, failure to obtain signatures of persons "affected" by the FSA, breach of duty by Ethel under the probate proceedings in the Philippines, and breach of the FSA, to be clearly erroneous.

Effect of the Trust Agreement on the FSA

Appellants allege the Supplemental Agreement of the FSA expressly provides that any property transferred to the trustee pursuant to the trust would be included in the estate of the decedent for the purposes of the FSA and that this provision, if enforced, would have the effect of destroying decedent's intent as to disposition of his estate under the trust.

Appellants claim the law is clear that beneficiaries may not alter or terminate a trust if it would frustrate a material purpose of the trust;¹⁰ that case law holds that a court with statutory power to approve a FSA will not do so if it terminates or materially alters a spendthrift trust; and that under such cases the court should have rejected the FSA because it terminated or materially altered the spendthrift trust. In candor, appellants acknowledge the Restatement Second of Trusts adopts a modified rule to the effect that an agreement to modify a spendthrift trust will not be effective to terminate the trust unless approved by the court as for the best interests of a beneficiary. They then set forth some reasons why it would not be for their best interests and say the court made no finding that would support court approval under the "best interest" standard.

Respondents assert that the cases cited are in accord with the general rule of law applying to trusts, but are

10. Sundquist v. Sundquist, 639 P.2d 1&1 (Utah 1981).

inapplicable to this case because: (1) The trust is illusory and contains few assets; (2) Appellants renounced any interest in the trust and are estopped from utilizing it to avoid the FSA; (3) Section 75-3-1101 specifically allows a FSA to be binding even if it affects a trust or inalienable interest; (4) It was in the best interests of appellants as beneficiaries to enter into the FSA.

We have found the FSA to be a valid contract, even without court approval. However, the trial court in its judgment approved the FSA. Under Section § 75-3-1101, it is thus binding, even though it may affect a trust or an inalienable interest.

Lack of Notice to Parsons and Huie

The record before this court shows that this issue is raised by appellants for the first time in their brief on appeal. The allegations of the eighth, ninth, and tenth causes of action with respect to failure to give notice to interested parties contain no mention of Parsons or Huie. In accord with established case law, we do not further consider this issue.¹¹

Jury Trial

Appellants asserted duress and failure of consideration as grounds to find the FSA invalid and unenforceable. Appellants contend they were entitled to have these issues decided by a jury because duress and lack of consideration were asserted as affirmative defenses to respondents' counterclaim seeking court approval of the FSA and damages. We disagree. Respondents put on no evidence in support of their claim for damages in their counterclaim, and hence, such affirmative defenses became moot.

Count eleven of appellants' complaint alleged a claim for damages on behalf of appellants for the intentional infliction

11. Jolivet v. Cook, 115 Utah Adv. Rep. 17, 19 (Utah 1989); Zion's First Nat'l Bank v. National American Title Ins. Co., 749 P.2d 651, 654 (Utah 1988); Salt Lake City Corp. v. James Constructors, Inc., 761 P.2d 42, 46 (Utah App. 1988).

of emotional distress. Such conduct, if proven, constitutes a tort.¹²

In Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344, 346-47 (1961), the Supreme Court stated:

An action may be maintained for severe emotional distress, though not accompanied by bodily impact or physical injury, where the defendant intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable persons would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality.

(footnote omitted). Samms is cited in Gygi v. Storch, 28 Utah 2d 399, 503 P.2d 449, 450 (1972), wherein our Supreme Court quoted comment h to section 46 of the Restatement (Second) of Torts, as follows:

It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so. Where reasonable men may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability.

In comment j of section 46 it is stated that:

12. In Restatement (Second) of Torts § 46 comment b (1965) it is stated that "[i]t is only within recent years that the rule stated in this section [on emotional distress] has been fully recognized as a separate and distinct basis of tort liability. That section states as an element of the tort of causing severe emotional distress that the conduct be "extreme and outrageous."

The rule stated in this section applies only where the emotional distress has in fact resulted, and where it is severe. . . . It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. . . . The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. . . . It is for the court to determine whether, on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.

In support of her claim, Maxine made the following allegations: While at the hospital during Grimm's final illness, Ethel threatened that unless Maxine had Grimm execute a new will, she would cause trouble. (Maxine retained a Utah law firm in an effort to satisfy Ethel's demand). Rex told Maxine the 1947 divorce between Grimm and Juanita was invalid and thus her marriage to Grimm was thus illegal, and they would commence court proceedings to so establish. Ethel and Rex broke into Maxine's house and removed certain personal property, including a safe, which they refused to return unless Maxine signed the FSA. Without telling Maxine, Ethel tried to gain control of the estate by having herself appointed special administratrix in the Philippine court through a "perjurious" petition in which she alleged Grimm died intestate and declaring that she was the only heir in the Philippines and refused to release such appointment unless Maxine signed the FSA. Ethel and Rex threatened to cause trouble with the taxing authorities and to interfere with a determination of Grimm's relationship with Parsons. Rex and Ethel continually pressured and harassed Maxine in March 1978 and entered Maxine's home unannounced, where Ethel swore and screamed at Maxine. They repeated such threats and demands, which were emotionally and physically devastating to Maxine, resulting in hospitalization. Even after the signing of the FSA, Rex and Ethel continued their personal attacks against Maxine, resulting in a second hospitalization.

The court ruled that appellants were not entitled to recover damages on their claim for intentional infliction of emotional

distress. In so doing, the court took that legal claim from the jury, in effect, directing a verdict. Therefore, we view the evidence in the light most favorable to the party against whom the verdict is directed, and sustain the ruling only if there is no evidence or reasonable inferences to be drawn therefrom to support an essential element of the claimant's prima facie case. Little America Refining Co. v. Leyba, 641 P.2d 112, 114 (Utah 1982); Gleave v. Denver & Rio Grande Western Railroad Co., 749 P.2d 660 (Utah App. 1988).

Respondents contend that the trial court properly ruled on this issue because, among other reasons,¹³ appellants were not entitled as a matter of right to have this issue decided by a jury. In support, they assert that by choosing to integrate this cause of action with their equitable claims for rescission, appellants cannot now claim a right to a jury trial. They cite Coleman v. Dillman, 624 P.2d 713 (Utah 1981) as authority for the proposition that, where the issues are predominately equitable in nature, a litigant is not entitled to a trial by jury on legal issues as a matter of right. We are not persuaded that early Utah authority cited by respondents, when read in context, supports this general proposition. State Bank of Lehi v. Woolsey, 765 P.2d 413 (Utah 1977); Sweeney v. Happy Valley, Inc., 18 Utah 2d 113, 417 P.2d 126 (1966). We are more persuaded by the reasoning in Valley Mortuary v. Fairbanks, 119 Utah 204, 225 P.2d 739 (1950), in which the Supreme Court, in an opinion in which Chief Justice Wolfe examined the issue at length, adopted the rule that where plaintiff unites an equitable and legal cause of action, "a jury trial should be accorded the parties on the issues of fact raised in the legal cause of action."

This rule is particularly compelling with the adoption of Utah Rule of Civil Procedure 13(a) governing compulsory counterclaims, which provides:

13. Respondents also assert no reversible error occurred because (1) under Philippine law there is no cause of action for such claim without attendant physical injury; (2) if a cause of action did exist under Utah law, the court found as a matter of law that the "evidence did not state a claim"; and (3) if appellants were entitled to a jury determination of this issue, they waived it by failing to make proper objection.

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

Clearly, Maxine's claim for damages for the intentional infliction of extreme emotional distress falls into the scope of a compulsory counterclaim.

An annotation states as follows:

The following federal cases dealing with the right to a jury trial of a legal counterclaim interposed in an equity suit were decided after the adoption of the Federal Rules of Civil Procedure, under which a defendant is compulsorily required, subject to certain exceptions not relevant to the present discussion, to assert as a counterclaim any claim he has against the opposing party if it arises out of the transaction or occurrence that is the subject matter of the original action. This requirement is evidently applicable irrespective of whether the counterclaim is one in law, or in equity. Although the opinions in several of these cases do not so state, it would appear from the facts set forth that in all of these cases the legal counterclaims which were interposed were compulsorily required to be filed, and that they could not thereafter be independently asserted. Because of this fact, and for the reason that to hold otherwise would deny to the counterclaimant his constitutional right to a jury trial, it has been generally held that a legal counterclaim so filed in an equitable action must, on demand of either of the parties, be tried to a jury.

Annotation, Right in Equity Cases to Jury Trial of Counterclaim Involving Legal Issue, 17 ALR3d 1321, 1342 (1968) (footnote omitted).

The trial court ruled on appellants' claim for severe emotional distress and sent the jury home after they had sat through this ten-day trial. We find upon our review of the evidence, viewed in the light most favorable to Maxine, that the evidence could have allowed a jury to find emotional distress and that it was therefore improper for the court to dismiss the claim. Thus we conclude Maxine was entitled to have her legal claim decided by a jury and so reverse that ruling and remand for a jury trial solely on that issue. The evidence does not support such a claim by Linda or Pete, nor as against Nita, so, as to these parties, the court's ruling is affirmed.

Findings of Fact

Appellants describe the court's findings as a "litany of omissions, half-truths, and unsubstantiated conclusionary findings" which as a whole constitute an abdication of the court's fundamental responsibility to fairly adjudicate and determine the facts pursuant to Utah Rule of Civil Procedure 52(a). Findings of fact and conclusions of law will support a judgment, even though they are general, if they follow the allegations of well-formulated pleadings in most respects. Pearson v. Pearson, 561 P.2d 1080 (Utah 1977). Case law, early in Utah's history, fixed a trial court's duty to find upon all material issues raised by the pleadings. Piper v. Hatch, 86 Utah 292, 43 P.2d 700 (1935); West v. Standard Fuel Co., 81 Utah 300, 17 P.2d 292 (1932).

In summary, appellants state the inadequacies they allege require a new trial. The transcript of the trial reflects conflicts in the testimony, and it is not surprising that counsel do not agree on facts as found by the court based upon the evidence presented to it. Although findings should be made on all material subordinate and ultimate factual issues, it is not necessary that a court resolve all conflicting evidentiary issues. Sorenson v. Beers, 614 P.2d 159 (Utah 1980).

As stated, Utah Rule of Civil Procedure 52(a) provides that findings of fact shall not be set aside unless clearly erroneous. A finding attacked as lacking adequate evidentiary support is deemed "clearly erroneous" only if an appellate court concludes that the finding is against the clear weight of the evidence. Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 899-900 (Utah 1989). We do not find the court's findings are against the clear weight of the evidence or so clearly

erroneous that failure to grant a new trial constitutes a denial of a fair trial. Utah R. Civ. P. 59(a)(1).

Respondents' Claim for Attorneys Fees

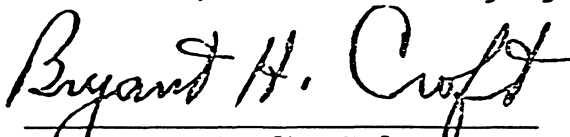
At the conclusion of the evidence, the court held an extensive hearing on the parties' respective motions for a directed verdict, following which the court advised counsel he was going to rule in respondents' favor. Upon hearing the court so state, counsel for respondents stated it had been agreed that the question of attorney fees, provided for in the FSA, would be submitted to the court, either by affidavit or in a further hearing. The findings of fact and conclusions of law make no mention of attorney fees, but the judgment of the court states: "Defendants' claim for attorney fees is denied."

Respondents cross-appeal that ruling, seeking a reversal. A review of both the civil and probate files discloses that on September 9, 1985, the affidavit of R. Brent Stephens, as counsel for respondents, asserted a claim for attorneys' fees for the total amount of \$149,490.60 based upon hourly rates set forth therein. Notice of taking the depositions of attorneys Harold Christensen and R. Brent Stephens was filed by appellants' counsel, together with subpoenas duces tecum, on September 13, 1985. Said attorneys filed a motion for a protective order from said notice on September 13, 1985. In a document entitled "Supplemental Objections and Comments to the Proposed Judgment of the Court," filed September 16, 1985, appellants contended there was no basis for attorney fees being awarded as the FSA was not binding until approved by the court and the court could not award attorney fees for legal services rendered prior to such approval. On March 3, 1986, counsel for appellants filed a notice of hearing to the effect that the issue of attorney fees would be heard before the court in Salt Lake City on March 17, 1986. Neither case file contains any further documents relevant to attorney fees.

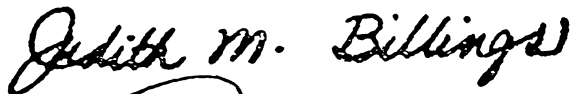
In Buehner Block Co. v. UWC Associates, 752 P.2d 892, 898 (Utah 1988), the Supreme Court said: "Of pivotal concern to us is the lack of any findings to support the trial court's ruling that no attorney fee would be allowed. . . ." We have the same concern. In Martindale v. Adams, 777 P.2d 514, 518 (Utah App. 1989), this court said: "To permit meaningful review on appeal, it is necessary that the trial court, on the record, identify such factors and otherwise explain the basis for its sua sponte reduction."

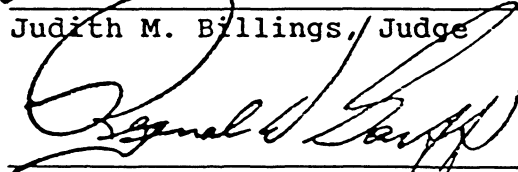
In the record, respondents' affidavit in support of its requested fee is undisputed as to amount and reasonableness, with appellants contending that no fee should be awarded at all. The absence in the record before us of findings and conclusions on the issue of attorney fees compels remand to the trial court to correct that deficiency in the record.

We therefore reverse the judgment on the claim for infliction of emotional distress and remand that claim for a trial by jury. We also remand the denial of attorneys fee for further proceedings or supplementation of the record. Otherwise, we affirm the judgment of the trial court.


Bryant H. Croft, Judge

WE CONCUR:


Judith M. Billings, Judge


Regnal W. Garff, Judge

COVER SHEET

CASE TITLE:

In the Matter of the Estate of
Edward Miller Grimm,
Deceased.

Maxine Tate Grimm, individually and
as Supervised Personal Representative
of the Estate of Edward Miller Grimm;
Linda Grimm; Edward Miller Grimm II;
and E. LaVar Tate, as Supervised
Personal Representative of the
Estate of Edward Miller Grimm,
Plaintiffs and Appellants,

No. 880708-CA

v.
Ethel Grimm Roberts, Rex Roberts,
Juanita Grimm Morris, and Juanita
Kegley Grimm,
Defendants and Respondents.

PARTIES:

Dan L. Berman (Argued)
Patricia A. O'Rourke
Peggy A. Tomsic
Blake S. Atkin
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50 South Main Street, Suite 1250
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Harold Christensen
R. Brent Stephens (Argued)
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10 Exchange Place
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M. David Eckersley (Argued)
Attorney for Respondent, Juanita Kegley Grimm
419 Boston Building
Salt Lake City, Utah 84111

M. David Eckersley (Argued)
Prince, Yeates & Geldzahler
City Centre I, Suite 900
175 East Fourth South
Salt Lake City, Utah 84111

TRIAL JUDGE:

Honorable Judge John A. Rokich

December 29, 1989. OPINION (For Publication)

This cause having been heretofore argued and submitted, and
the Court being sufficiently advised in the premises, it is now
ordered, adjudged and decreed that the judgment of the trial court be affirmed.

and remanded for further proceedings in accordance with the views expressed in the opinion filed herein.

Opinion of the Court by BRYANT H. CROFT, Judge, sitting by special appointment; JUDITH M. BILLINGS, and REGINAL W. GARFF, Judges, concur.

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of January, 1990, a true and correct copy of the foregoing OPINION was deposited in the United States mail or personally delivered to each of the above parties.


Deputy Clerk

TRIAL COURT:

Third District Court, Tooele County, No. C-80-0322

Tab 2

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

In the Matter of the Estate
of EDWARD MILLER GRIMM,

Deceased.

Probate No. 3720

MAXINE TATE GRIMM, indiv-
idually and as Supervised
Personal Representative of
the Estate of Edward Miller
Grimm; LINDA GRIMM; EDWARD
MILLER GRIMM, II; and E. LaVAR
TATE, as Supervised Personal
Representative of the Estate
of Edward Miller Grimm,

Plaintiffs,

VS.

ETHEL GRIMM ROBERTS, REX
ROBERTS, JUANITA GRIMM
MORRIS and JUANITA KEGLEY
GRIMM,

Defendants.

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BERMAN & O'RORKE

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

CIVIL NO. C 80-0322

Judge John A. Rokich

This cause came on regularly for trial on Tuesday, the 6th day of August, 1985. Plaintiffs were represented by Daniel L. Berman, of Berman & Anderson. Defendants Roberts and Morris were represented by Harold G. Christensen and R. Brent Stephens, of Snow, Christensen & Martineau. Defendant Juanita Kegley Grimm was represented by David Eckersley, of Houpt & Eckersley. Although the principal issue in dispute was the validity of the Family Settlement Agreement, a jury was duly empaneled to try any issues appropriate for jury determination after resolution of the validity issue.

The Court and jury heard the testimony of witnesses, exhibits were offered and received into evidence, and upon both sides having rested, and motions for Directed Verdicts having been made, the Trial Court announced that his decision was that all issues were determined in favor of the defendants, whereupon the jury was discharged.

The Court being fully advised and having announced his decision, now makes and enters the following

FINDINGS OF FACT

1. On February 22, 1926, Edward Miller Grimm (GRIMM) married defendant Juanita Kegley Grimm (JUANITA). They resided in the Philippine Islands from 1926 until 1937. Two children were born of that marriage, defendant Ethel Grimm Roberts (ETHEL), born in 1928, and defendant Juanita Grimm Morris (NITA), born in 1930.

2. In 1937, defendants JUANITA, ETHEL and NITA moved to San Francisco. GRIMM remained in the Philippine Islands, and later served in the U. S. Army in the South Pacific.

3. In 1945, plaintiff Maxine Tate Grimm (MAXINE), employed as a Recreational Director by the American Red Cross, met GRIMM in the Philippines.

4. In 1947, without personally contacting JUANITA, GRIMM came to the United States and filed a Complaint for Divorce in Reno, Nevada (PX-1).

5. GRIMM came to Nevada, established residency for the sole purpose of obtaining a divorce and other than meeting the divorce residency requirement, GRIMM was never an actual resident of Nevada.

6. On June 2, 1947, a Decree of Divorce was entered, divorcing JUANITA and GRIMM (PX-3). Three weeks later, on June 25, 1947, GRIMM and MAXINE were married in Tooele, Utah.

7. Following the marriage, GRIMM and MAXINE returned to the Philippines. They maintained homes in the Philippine Islands and Tooele, Utah, which homes they would occupy when not traveling. They occupied the home in the Philippine Islands most of the time except for the last two years of GRIMM'S life when the Grimms spent more time in Tooele, Utah. GRIMM died November 27, 1977, in the Philippine Islands.

8. Two children were born to GRIMM and MAXINE, Edward Miller Grimm II (PETE), born in 1951, and Linda Grimm Lawyer (LINDA), born in 1953.

9. In 1947, ETHEL, GRIMM'S daughter by his first marriage, returned to the Philippines. She married Pat McFadden an employee of GRIMM. They had six children by that marriage. She divorced Mr. McFadden and married Rex Roberts after 1947.

10. After the Second World War, GRIMM rebuilt and developed his various businesses.

11. In 1959, GRIMM executed two wills prepared by a lawyer in California. The first will was referred to as the Non-Philippine Will (PX-6). The second will was referred to as the Philippine Will (PX-7). In general under the Philippine Will ETHEL and NITA would receive that portion of the estate to which they would be entitled under Philippine law if they were compulsory heirs. Under the Non-Philippine Will, ETHEL and NITA would receive nothing.

12. After 1959, assets situated outside the Philippines became significantly greater. In 1964, GRIMM organized Globe Investment Company, essentially a holding company for real properties located in the United States. In addition, Globe had a wholly-owned subsidiary, Proud Porker Ranch, a hog farm in Tooele, Utah (DX-272, PX-12). On the other hand, Luzon Stevedoring was sold in 1964 and Everett Steamship Lines in 1976, both substantial companies owned by GRIMM and Charles Parsons.

13. In the summer of 1976, GRIMM came to Utah for medical treatment. While in Utah, he caused a Trust Agreement to be prepared.

14. On July 12, 1977, GRIMM executed the Trust Agreement naming PETE Trustee and MAXINE, PETE and LINDA as beneficiaries. When the Trust Agreement was executed, the only assets purportedly transferred to the Trustee were the shares of Globe Investment Company (PX-8).

15. In July of 1977, GRIMM returned to the Philippines. He was not in good health and from September through November of 1977 his health deteriorated to the point that death was imminent.

16. On August 16, 1977, certain assignments were executed by GRIMM purporting to place most Philippine assets of GRIMM in trust (PX-14, 15).

17. It is questionable if the assignments were in fact properly delivered to the Trustee because PETE testified that he placed the assignments in his dad's safety deposit box which was in the name of E. M. Grimm. In October or November of 1977 but prior to GRIMM'S death, MAXINE took the contents out of GRIMM'S safety deposit box and placed the contents in a safety deposit box in her name. It was not until after the death of GRIMM that she placed the trustees name on the box. PETE wrote on November 14, 1977, "Before transferring them (stocks) I think we should get their (Kirton, McConkie) opinion" (DX-302).

18. As previous stated, GRIMM sold his interest in Everett Steamship Company in 1976. At the time of his death on November 27, 1977, GRIMM was owed three payments of \$984,092.31 each, due June 30, 1978, June 30, 1979, and June 30, 1980 (DX-272, p. 9). GRIMM made no effort to transfer the Everett receivable or certain land located in Daggett County, Utah, to the Trust.

19. On October 1, 1977, GRIMM entered Makati Medical Center where he remained until his death. During that time, his medical condition steadily deteriorated. Prior to October 1977, the relationship between ETHEL and REX on the one hand, and GRIMM, MAXINE, PETE and LINDA on the other hand, was cordial, friendly and close, they were all supportive and helpful of one another during GRIMM'S last illness.

20. NITA'S relationship with her father and with MAXINE, PETE and LINDA also was a good relationship.

21. In November 1977, just prior to GRIMM'S death NITA visited her father in the Makati Medical Center. Her trip from California was paid for by Maxine.

22. While NITA was in the Philippines, she also visited with Charles Parsons and his wife. Mr. Parsons was a business associate, friend, and partner of GRIMM in several business ventures located in the Philippines and in Hong Kong, including G-P & Co., FEMOLA and Hong Kong Transportation Company. During that visit, NITA was informed by Parsons that there was a trust in existence and that it was unfavorable to ETHEL and NITA.

23. During GRIMM'S last illness MAXINE had consulted with Britt McConkie, who was in the Philippine Islands for the L.D.S. Church and who was also a member of the law firm of Kirton, McConkie, Boyer and Boyle.

24. In November 1977, before GRIMM'S death, MAXINE directed PETE, who was then residing in Utah, to consult with Mr. McConkie's law firm in Utah and have documents prepared which would treat ETHEL and NITA equally with PETE and LINDA, and give MAXINE one-half of GRIMM'S Estate.

25. Pursuant to MAXINE'S direction, PETE conferred with the firm of Kirton, McConkie, Boyer & Boyle. PETE reported his conference to GRIMM, MAXINE and LINDA by letter dated November 14, 1977 (PX-302). New documents were prepared in accordance with MAXINE'S direction. These documents were sent to the Philippines but did not arrive before GRIMM'S death on November 27, 1977.

26. On December 1, 1977, the day before MAXINE and LINDA left for Tooele, Utah to attend the funeral, REX and ETHEL visited to say goodbye. At that meeting, they inquired about a will. MAXINE denied any knowledge of a will and, in her own words, "blew up." It was a very emotional time for all involved and a very emotional meeting.

27. While en route to Utah, MAXINE wrote a letter to ETHEL which said, in part:

"Dearest ETHEL -

Please forgive me for blowing up - I was so
ashamed.

. . .

I'm also sorry about all the mixup on the will
bit.

. . .

Thanks so much for your support during those trying
days.

Love,

Maxine" (PX-202)

The letter is indicative of MAXINE'S desire to continue
harmonious family relationships with ETHEL'S family.

28. MAXINE also wrote REX, ETHEL'S husband, thanking
him for all his help in the past and then. (DX-287)

29. During December 1977, the relationship between MAXINE,
ETHEL, REX, NITA, LINDA and PETE was still cordial but strained
due to emergence of the trust, which terms were not favorable
to ETHEL and NITA. Correspondence and communications were
sent and received during the month of December also showing
a desire on behalf of all family members to resolve the matter
amicably. (PX-75, PX-76, PX-77, PX-78)

30. ETHEL was appointed Special Administratrix by the
Philippine court on January 12, 1978, which was in accord
with Mr. Salisbury's recommendation. (PX-80) On January
18, ETHEL wrote MAXINE reporting her temporary appointment
and informing MAXINE of the hearing date when a regular admin-
istrator would be appointed. (PX-81)

31. On January 24, 1978, ETHEL and REX visited MAXINE'S house in the Philippines and without the express permission of MAXINE removed certain valuables from the house for safekeeping. An inventory was prepared of all items removed. (PX-85, 86) After learning of the appointment and the removal of items from her home, Mr. Salisbury prepared a cable to ETHEL objecting to the appointment and made demand that items taken from the house be returned. (PX-88)

32. By January 31, 1978, Mr. Salisbury had been made aware by MAXINE of an income tax case concerning GRIMM'S taxes pending before the U. S. Tax Court, Washington, D.C., which was being handled by Mr. Bert Rand for GRIMM prior to GRIMM'S death.

33. In January and February 1978, Mr. Salisbury was informed and discussed with MAXINE the fact that for Philippine estate tax purposes, the estate of non-citizen domiciliaries of the Philippines included all property of the deceased, real or personal, tangible or intangible wherever situated, except real estate located outside the Philippines and that the tax rate was 60 percent. (PX-272)

34. In January or February 1978, Mrs. Maxine Grimm retained a lawyer in the Philippine Islands, Mr. Edgardo J. Angara. Mr. Salisbury and Mr. Angara exchanged telegrams and conversed by telephone about the numerous questions concerning the Estate,

including GRIMM'S domicile and the effect of Philippine domicile, the law of legitime by which children are compulsory heirs, and its effect on the trust, the Civil Law doctrine of collation, the assets subject to taxation in the Philippines and the doctrine of renvoi as applied to succession from persons having citizenship different from their domicile.

On February 17, 1978, Mr. Angara telegraphed Mr. Salisbury as follows:

Please advise us, therefore, whether the disposition made by the decedent in his Philippine will in accordance with Philippine law are contrary to Utah law.

(HH) We would also like to know from you whether there is a conflict of law rule in Utah providing that the law of the domicile of the decedent shall govern successional rights. If there is such a rule, and the Philippines is held to be the domicile of the decedent at the time of his death, the Philippine courts will accept the renvoi or the reference back to Philippine law, in which case the testamentary dispositions of the late Mr. Grimm in his Philippine will in accordance with the Philippine law even if inconsistent with Utah law will be valid and operative.

(II) We now turn to the legal effects of the trust agreement executed by the late Mr. Grimm. Under Philippine law, properties transferred to a trust where the trustor retains the power to revoke are included as part of the gross estate in determining the net estate subject to estate tax. Furthermore, such trust properties are subject to collation in determining the compulsory legitimes of the heirs. Thus, if the transfer in trust affects the legitimes of the heirs, such transfer shall be accordingly reduced; otherwise, the properties held by the trustee will be left intact.

(FF) Under Philippine law, the order of succession, the amount of successional rights and the intrinsic validity of the national law of the decedent, whatever may be the nature of the property and regardless of the country

wherein said property may be found, with respect to an American citizen, the applicable law will be that of the state where he is a citizen. In the case of the late Mr. Grimm, we assume that he was a citizen of the State of Utah at the time of his death.

We would like to know, therefore, the Utah law on the order of succession and the amount of successional rights, particularly whether Utah law recognizes community of property between spouses and whether the surviving spouse and the children are considered compulsory heirs and if so, the amount of their respective successional rights or what is known in civil law as compulsory legitimes.

In response to this question from Mr. Angara, Mr. Salisbury said:

It would therefore be my opinion that the Philippine Will should be governed by Philippine law even though inconsistent with the laws of the State of Utah because of the conflict of law rule referred to above. Prior to the above referred code section, Utah would have adopted the common law rule that the law of the domicile controls the validity of the Will and successional rights.

(II) With respect to the legal effect of the trust agreement, both U. S. and Utah law would be the same as the Philippine law and include the assets of the trust in the estate for death tax purposes. However, as indicated above, under Utah law the assets of the trust would not be subject to collation in determining the compulsory share of the heirs. (DX-254)

Mr. Benavince, an after the fact witness, was called as an expert to testify as to the applicability of the Philippine law in regards to this case. Mr. Benavince testified that pursuant to Article 16 of the Philippine Code that the law of the country in which the decedent is a citizen is the applicable law. However, MAXINE, having the benefit of Mr. Angara's and Mr. Salisbury's opinion did execute the family settlement agreement.

At the time of GRIMM'S death, his estate, mostly personal property, was in excess of Eight Million Dollars, with assets situated in the Philippines, in Hong Kong and in the United States. There were numerous questions to be resolved. Mr. Salisbury also corresponded with an attorney in Reno, Nevada, concerning the validity of GRIMM'S divorce and hence the validity of his marriage to MAXINE.

35. By February, 1978, Mr. Salisbury had concluded that it might be an advantage to work out a settlement for tax purposes if the trust could be left intact. (PX-254)

36. During March 1978, Mr. Salisbury talked at least five times with MAXINE about legal issues concerning this estate and the possibility of settlement. Mr. Salisbury made calculations as to what ETHEL and NITA might received under various assumptions. MAXINE told Mr. Salisbury that ETHEL had presented a paper outlining a settlement proposal and had asked her to sign it. Mr. Salisbury advised MAXINE not to sign and, upon his advise, she did not do so.

37. MAXINE was agreeable to and desirous of entering into an agreement, but wanted it consummated in Utah under Mr. Salisbury's supervision and wanted to receive her one-half free of tax.

38. On March 7, 1978, MAXINE wrote Mr. Salisbury indicating her desire and need for a settlement. She said:

I am wondering if our communication is getting through. We understood that you were going to let us know if you needed the will. We could have sent it earlier if we had known. As you know, time is a factor with us. We cannot do anything until we get that court order out of our hair. I have talked to Ethel and she well understands that if we fight we can all lose, so she is agreeing not to fight, but I still know that there is great feeling there and she could turn under pressure, although I think she would be afraid to. I have no feeling of pressure anymore. I can talk without any emotional feelings, so I am grateful for that blessing. Peter, of course, has no problem. I feel good about the way he is talking. As soon as our position is straightened out, we can begin to act, and then I think we will get more cooperation. At this time everyone is afraid to do or say anything, as they know what a horrible thing it would be if the family fought in court--everything then would get exposed--good and bad.

I feel that these lawyers are a bit puffed up with their name and need direction and push. They are more apt to follow than lead.

Mail is very slow. We are getting ours in 2 weeks. You will probably get ours in 4 to 7 days. Clark Air Base gets theirs in 4 days, but it is a long ride up there to get it, however, with important papers that is the best way I think. Sending them by courier is expensive--\$30 plus, but we felt this was the only way to send the will, as we know of no one going to the States.

Thank you so much for your interest and help. Somehow all of this will come out alright. Are you aware that Rand is coming in April?" (DX-256)

39. In late February or early March 1978, ETHEL and NITA employed Mr. Donald Holbrook of Jones, Waldo, Holbrook & McDonough to represent their interests in Utah. Mr. Holbrook and others in his office and Mr. Salisbury and others in his office communicated over a period of several weeks. On April 4, 1978, Mr. Holbrook's office and Mr. Salisbury's office stipulated to the admission

of the non-Philippine will to probate in Tooele County under certain conditions. (DX-260) Final negotiations, with REX representing ETHEL and NITA, and PETE representing MAXINE and LINDA consumed at least five days, from April 20 through April 25, 1978. There were at least four revisions of the first draft prepared by Mr. Salisbury. (DX-261, DX-261A, DX-263, DX-264, DX-265) The final agreement was incorporated into two documents, the Settlement Agreement and the Supplemental Memorandum. (PX-57, 58, 59)

40. During the negotiations each side presented points and proposals to advance the positions of their clients. PETE and Mr. Salisbury were insistent and the first wife, JUANITA, sign the agreement to relinquish any claim she might have to the estate. During the negotiations it was agreed that MAXINE receive a guaranteed miniumum of \$1,500,000 plus her two houses and certain bank accounts regardless of the eventual size of the estate. PETE and Mr. Salisbury also insisted that MAXINE receive her share without reduction by way of death taxes. Negotiations also resulted in an agreement that PETE and LINDA receive certain bank accounts and that ETHEL and NITA be guaranteed a minimum.

41. Mr. Salisbury communicated at least twice in April with MAXINE. PETE conferred with Mr. Salisbury on a continual basis between April 17 and April 25, 1978. On the morning prior to signing the Family Settlement Agreement PETE represented to Mr. Salisbury that he had discussed the agreement with his mother (MAXINE) the night before and that she wanted to go ahead.

42. The Agreement was signed on April 25, 1978, by PETE and LINDA, by PETE as attorney-in-fact for MAXINE and by REX as attorney-in-fact for ETHEL and NITA. It was also signed by both attorneys. Subsequently a copy was signed by NITA in California and by ETHEL and MAXINE in the Philippine Islands. Pursuant to the Family Settlement Agreement, Mr. Salisbury was retained as attorney for the Estate to represent all of the "heirs".

43. The Family Settlement Agreement was not signed as a result of threats, duress or coercion. MAXINE was represented by Mr. Salisbury who advised Mrs. Maxine Grimm that he had investigated the claims made by NITA and ETHEL and she did not have to enter into a settlement agreement if she did not desire to do so.

44. The Family Settlement Agreement was incorporated into two separate documents to preserve maximum flexibility for filing of state tax returns.

45. During the negotiations and afterward, there was a discussion about the desirability of presenting the Family Settlement Agreement to the court for approval. Mr. Salisbury concluded that it was not unusual not to file the Family Settlement Agreement. Mr. Salisbury also stated that the tax consequences were a consideration for not filing the Family Settlement Agreement with the court for approval.

46. Mr. Salisbury concluded that it was not in the interest of the estate to make the agreement a matter of public record at that time. It was preferable to preserve maximum flexibility for the Estate and all signatories to the Agreement.

47. Subsequent to the signing of the Settlement Agreement, all of the parties worked toward and pursuant to the Agreement.

48. On May 4, 1978, MAXINE and ETHEL jointly retained the accounting firm of Price Waterhouse to be Estate Accountant.
(DX-213)

49. On May 19, 1978, MAXINE, PETE and ETHEL filed a Joint Petition for Letters of Administration in accordance with the terms of the Agreement (DX-214), which Petition was granted and Joint Letters issued on July 2, 1978 (DX-218)

50. On June 27, 1978, MAXINE wrote NITA a letter expressing her pleasure with the Agreement and that "much money will be saved' because of it. (DX-292)

51. In August 1978, MAXINE borrowed \$500,000 from Globe Investment Company, an asset of the estate, and before liquid funds became available, Globe was required to borrow money at 9.65%. (DX-293, DX-371)

52. On September 20, 1978, Mr. Salisbury wrote to the beneficiaries again reaffirming the Agreement (DX-221). This letter is the first of a number of reports to the beneficiaries by Mr. Salisbury concerning the progress of the Estate pursuant to the Family Settlement Agreement. At no time did MAXINE, PETE or LINDA take exception to any of the reports of Mr. Salisbury.

53. In February, 1979, MAXINE obtained an Order for a family allowance of \$3000 per month retroactive to the date of GRIMM'S death.

54. Also in February, 1979, the U. S. Estate Tax Return was signed by MAXINE and filed. The estate tax issue was simplified and aided by the Family Settlement Agreement in the opinion of Mr. Salisbury. Under the return MAXINE claimed the maximum marital deduction.

55. In November, 1978, Mr. Salisbury visited MAXINE in the Philippine Islands. Again, there was no indication by MAXINE during that meeting that she wanted to repudiate the Settlement Agreement.

56. On May 23, 1979, \$800,000 of the Everett receivable was distributed in accordance with the Family Settlement Agreement and in the percentages designated by the Family Settlement Agreement: \$400,000 to MAXINE and \$100,000 each to the four children. In addition pearls and silver were distributed in accordance to the terms of the Family Settlement Agreement.

57. In September, 1979, the Philippine estate taxes were paid. Because there were not sufficient liquid funds to pay all of the estate taxes due, the shortfall was paid by the respective beneficiaries in accordance with their shares under the Family Settlement Agreement.

58. In August, 1979, Mr. Salisbury again visited MAXINE in the Philippine Islands and traveled with MAXINE to Hong Kong.

59. In September, 1979, Mr. Salisbury, as part of his regular reports, provided for a plan of partition in accordance with the Family Settlement Agreement. Again, no objection was made by MAXINE, PETE or LINDA. (DX-241)

60. On October 1, 1979, MAXINE wrote ETHEL stating that soon the beneficiaries would have the actual partition.

61. After October, 1979, MAXINE did nothing to cause the partition of the estate to occur.

62. MAXINE did not file an inventory in the Utah Probate proceeding, and attempted to block any progress toward partition by failing to communicate with ETHEL and NITA.

63. On May 14, 1980, a Petition for Removal was filed on behalf of ETHEL and NITA requesting MAXINE to be removed as Personal Representative and requesting distribution in accordance with the Family Settlement Agreement.

64. On June 13, 1980, Mr. Rand wrote Mr. Salisbury informing Mr. Salisbury that MAXINE, PETE and LINDA were repudiating the Agreement.

65. With more specific reference to the claim for rescission of the Family Settlement Agreement, the court finds:

A. The defendants did not breach any of the terms of the Family Settlement Agreement.

B. Defendants in good faith believed that the claims they asserted regarding possible invalidity of the trust, possible invalidity of GRIMM'S divorce and effect of application of Philippine law were legitimate claims. The claims were of such merit that Mr. Salisbury researched the issues and advised MAXINE and PETE accordingly.

C. Defendants did not know that the claims they asserted were unfounded. It is not necessary to find whether they were or were not unfounded.

D. None of the plaintiffs was put in such fear as to overcome their free will or to compel them to act against their will.

66. Although MAXINE from time-to-time felt under some pressure, it was not of the kind or intensity sufficient to deprive her of her free will during the period prior to the execution of the Family Settlement Agreement, particularly in view of the fact that discussions and negotiations extended over a period of approximately three months during which time MAXINE had the benefit of the advice of Mr. Salisbury in the United States and Mr. Angara in the Philippines.

67. The execution of the Family Settlement Agreement by the plaintiffs was not the result of duress, coercion or fraud upon the part of one or more of the defendants.

68. After the execution of the Family Settlement Agreement, although both ETHEL and MAXINE experienced dissatisfaction with the progress in closing the estate, MAXINE was not under duress or coercion to deprive her of her free will and she was physically and mentally able to attempt to rescind the Family Settlement Agreement, had she desired to do so even though there was no legal or equitable basis for doing so.

69. With more specific reference to the claims of lack or failure of consideration the court finds:

A. Mutual forbearance to prosecute claims;

B. Mutual promises for the sake of family harmony constitute consideration;

C. Both sides of the controversy received benefits from the Family Settlement. Litigation was avoided (until repudiation). Expense was minimized (until repudiation). The parties were united in dealing with taxing authorities and with the Parsons. MAXINE received the residences. MAXINE received a minimum guarantee. MAXINE got her share free of tax. Philippine estate tax was reduced by making it unnecessary for ETHEL and NITA to claimn entire estate, except for real estate in Daggett County subject to distribution (and taxation) under law of the Philippines.

70. With respect to the Family Settlement Agreement, and with specific reference to the Supplemental Memorandum, the court finds:

A. The terms of the compromise of the controversy concerning the estate of GRIMM have been set forth in an agreement in writing (the Settlement Agreement and the Supplemental Memorandum) executed by all persons having beneficial interests or claims which are or may be affected by the compromise as required by Section 75-3-1102(a) U.C.A., 1953.

B. Said agreement was presented to the court by plaintiffs by reference to their claim of a right to rescind. Defendants asked the court by answer to enforce the agreement in accordance

with its terms. Later defendants by way of amendment specifically asked the court to approve the Family Settlement Agreement. Said agreement is properly before the court and has already been signed by MAXINE as personal representative and by PETE as trustee.

C. All interested persons have had notice.

D. The contest or controversy was and is in good faith and the effect of the agreement upon the interests of persons affected is just and reasonable.

E. The Family Settlement Agreement specifically provides that the parties to the agreement shall execute any and all additional documents of every nature and description which may be reasonably required to carry out the terms, provisions and intentions of the Agreement.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. At the time of the execution of the Power of Attorney in favor of Pete, and at the time he executed the Family Settlement Agreement, pursuant to the Power of Attorney and at the time she personally executed the Family Settlement Agreement, MAXINE was not acting under fraud, duress or coercion.

2. At the time of executing the Family Settlement Agreement, neither PETE nor LINDA was acting under fraud, duress or coercion.

3. The Family Settlement Agreement is supported by good and sufficient consideration and is a valid and binding agreement.

4. Following the execution of the Family Settlement Agreement there was no failure of consideration or breach of the Family Settlement Agreement by ETHEL or NITA or JUANITA.

5. Following the execution of the Family Settlement Agreement the parties acted in conformity therewith for a period of approximately 20 months during which time the plaintiffs received certain benefits and the defendants made changes in position to their detriment in reliance upon the provisions of the Family Settlement Agreement.

6. If the plaintiffs had grounds to set the Family Settlement Agreement aside at the time of its execution, which the court concludes they did not, such grounds were waived by the subsequent conduct of the plaintiffs.

7. If the plaintiffs had grounds to set the Family Settlement Agreement aside at the time of its execution, which the court concludes they did not, plaintiffs have ratified and affirmed the Family Settlement Agreement.

8. The Family Settlement Agreement was not subject to repudiation without legal consequences prior to approval by the court. Failure to obtain court approval does not invalidate the Family Settlement Agreement. The Family Settlement Agreement could be presented to the court for approval at any time prior to distribution and closing of the estate.

9. The Family Settlement Agreement is just and reasonable and should be approved and all fiduciaries under the supervision of this court should be directed to administer and distribute the estate in accordance with the terms of the Family Settlement Agreement.

Dated this 25 day of April, 1986.

BY THE COURT

John A. Rokich
JOHN A. ROKICH
DISTRICT JUDGE

STATE OF UTAH)
County of Tooele) ss
DENNIS D. EWING, County Clerk and Ex-Officio Clerk of the District Court of
the Third Judicial District of the State of Utah in and for the County of Tooele,
County of Tooele, do hereby certify that the foregoing copy of
Findings of Fact 3 Conclusion of Law
has been by me compared with the original record, now of record in my office and
that the same is a full, true and correct transcript therefrom and of the whole of
said original, as the same appears of record in my office and in my custody.
Witness my hand and official seal this 5 day of May A.D. 1986
Clerk
File No. 3720
Deputy Clerk
Original Filed April 29 1986
Sharon Collier

Tab 3

1983 APR 29 PM 13:37

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DAVID W. SLAGLE #2975
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IN THE THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY

STATE OF UTAH

In the Matter of the Estate of)
EDWARD MILLER GRIMM,)
Deceased.)

Probate No. 3720

MAXINE TATE GRIMM,)
individually and as)
Supervised Personal)
Representative of the Estate)
of Edward Miller Grimm;)
LINDA GRIMM; EDWARD MILLER)
GRIMM, II; and E. LAVAR TATE,)
as Supervised Personal)
Representative of the Estate)
of Edward Miller Grimm,)
Plaintiffs,)

JUDGMENT

vs.)

ETHEL GRIMM ROBERTS, REX)
ROBERTS, JUANITA GRIMM)
MORRIS and JUANITA KEGLEY)
GRIMM,)
Defendants.)

Civil No. C-80-0322

Judge John Rokich

On August 6, 1985, this cause came on regularly for trial before The Honorable John A. Rokich, District Judge. Plaintiffs were represented by Daniel L. Berman, of Berman & Anderson. Defendants Roberts and Morris were represented by Harold G. Christensen and R. Brent Stephens, of Snow, Christensen & Martineau. Defendant Juanita Kegley Grimm was represented by David M. Eckersley, of Houpt & Eckersley. Although the principal issue in dispute was the validity of the Family Settlement Agreement, a jury was duly impaneled to try any issues appropriate for jury determination after resolution of the validity issue. The Court and jury heard the testimony of witnesses, exhibits were offered and received as evidence, and upon both sides having rested, and motions for directed verdicts having been made, and the trial court concluding that judgment should be entered for defendants herein in accordance with the Findings of Fact and Conclusions of Law filed heretofore,

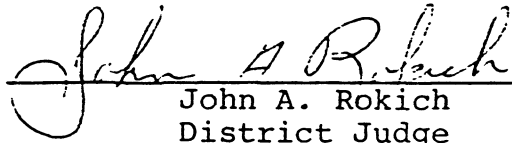
IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Family Settlement Agreement is a valid and binding agreement.
2. The Family Settlement Agreement is just and reasonable and, to the extent approval is necessary, the Family Settlement Agreement is hereby approved by the Court.
3. All fiduciaries under supervision of this Court are hereby directed to administer and distribute the Estate in accordance with the terms of the Family Settlement Agreement.

4. Plaintiffs' Complaint is hereby dismissed on the merits.
5. To the extent of the relief granted in paragraphs 1, 2 and 3, defendants are awarded judgment on their Counterclaim.
6. Defendants' claim for attorneys' fees is denied.
7. Defendants are awarded their costs.

Dated this 25 day of April, 1986.

BY THE COURT:


John A. Rokich
District Judge

STATE OF UTAH)
County of Tooele) ss

DENNIS D. EWING, County Clerk and Ex-Officio Clerk of the District Court of the Third Judicial District of the State of Utah in and for the County of Tooele, a Court of record, do hereby certify that the foregoing copy of _____

Judgment
has been by me compared with the original thereof, now of record in my office and that the same is a full, true and correct transcript therefrom and of the whole of said original, as the same appears of record in my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 1 day of May, A.D. 1986

File No. 3720 Clerk
By Sharon Callister
Original Filed April 29 Deputy Clerk 1986

Tab 4

Part 11

Compromise of Controversies

75-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.—A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: C. 1953, 75-3-1101, enacted by L. 1975, ch. 150, § 4.

Collateral References.

Compromise and Settlement⇒1 et seq.; Executors and Administrators⇒87.

15A C.J.S. Compromise and Settlement § 1 et seq.; 33 C.J.S. Executors and Administrators § 181.

31 Am. Jur. 2d 135, Executors and Administrators § 258; 80 Am. Jur. 2d 217, Wills § 1099.

Also see Am. Jur. 2d, New Topic Service, Uniform Probate Code.

Claim against estate, power and responsibility of executor or administrator to compromise, 72 A. L. R. 2d 243.

Claim due estate, power and responsibility of executor or administrator to compromise, 72 A. L. R. 2d 191.

Death: power and responsibility of executor or administrator as to compromise or settlement of action or cause of action for death, 72 A. L. R. 2d 285.

Intestate estate, family settlement of, 29 A. L. R. 3d 174.

Tab 5

Part 11

Compromise of Controversies

75-3-1102. Procedure for securing court approval of compromise.—

(1) The procedure for securing court approval of a compromise is as follows:

(a) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(b) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(c) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, may make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: C. 1953, 75-3-1102, enacted by L. 1975, ch. 150, § 4.

Editorial Board Comment.

This section and the one preceding it outline a procedure which may be initiated by competent parties having beneficial interests in a decedent's estate as a means of resolving controversy concerning the estate. If all competent persons with beneficial interests or claims which might be affected by the proposal and parents properly representing interests of their children concur, a settlement scheme differing from that otherwise governing the devolution may be substituted. The procedure for securing representation of minors and unknown or missing persons with interests must be followed. See section 75-1-403. The ultimate control of the question of whether the substitute proposal shall be accepted is with the court which must find: "that the contest or controversy is in good faith and that the effect of the agreement upon the interests of parties represented by fiduciaries is just and reasonable."

The thrust of the procedure is to put the authority for initiating settlement proposals with the persons who have beneficial interests in the estate.

trustees from vetoing any such proposal. The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation. Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator's intention, the judgment of the court is substituted for that of such fiduciaries in appropriate cases. A controversy which the court may find to be in good faith, as well as concurrence of all beneficially interested and competent persons and parent-representatives provide prerequisites which should prevent the procedure from being abused. Thus, the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan.

See section 75-1-403 for rules governing representatives and appointment of guardians ad litem.

These sections are modeled after Section 93 of the Model Probate Code. Comparable legislative provisions have

Tab 6

75-3-912. Private agreements among successors to decedent binding on personal representative.—Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing contained in this section relieves trustees of any duties owed to beneficiaries of trusts.

History: C. 1953, 75-3-912, enacted by L. 1975, ch. 150, § 4.

Editorial Board Comment.

It may be asserted that this section is only a restatement of the obvious and should be omitted. Its purpose, however, is to make it clear that the successors to an estate have residual control over the way it is to be distributed. Hence, they may compel a personal representative to administer and distribute as they may agree and direct. Successors should compare the consequences and possible advantages of careful use of the power to renounce as described by section 75-2-801 with the effect of agreement under this section. The most obvious difference is that an agreement among successors under this section would involve transfers by some participants to the extent it changed the pattern of distribution from that otherwise applicable.

Differing from a pattern that is fa-

miliar in many states, this Code does not subject testamentary trusts and trustees to special statutory provisions, or supervisory jurisdiction. A testamentary trustee is treated as a devisee with special duties which are of no particular concern to the personal representative. Chapter 7 contains optional procedures extending the safeguards available to personal representatives to trustees of both inter vivos and testamentary trusts.

Collateral References.

Compromise or settlement by statutory beneficiaries without assent of personal representative of death action commenced by latter, 29 A. L. R. 2d 1452.

Family settlement of testator's estate, 29 A. L. R. 3d 8.

Post-mortem payment or performance, validity of agreement between beneficiaries as affected by provision for, 1 A. L. R. 2d 1270.

Tab 7

ART. I, § 10

CONSTITUTION OF UTAH

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Comparable Provision.

Montana Const., Art. III, § 23.