

1982

# Douglas Fairbanks Close v. Allene Close Adams : Brief of Respondent

Utah Supreme Court

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Lyle J. Barnes; Attorney for Plaintiff-Appellant;

Pete N. Vlanos; Attorney for Defendant-Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

DOUGLAS FAIRBANKS CLOSE, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 ) SUPREME COURT NO.  
 ALLENE CLOSE ADAMS, ) 18204  
 )  
 Defendant-Respondent. )  
 )  
 \_\_\_\_\_ )

RESPONDENT'S BRIEF

Appeal from a Final Judgment of the  
Second Judicial District Court for  
Davis County, State of Utah

HONORABLE DOUGLAS L. CORNABY  
District Court Judge

PETE N. VLAHOS  
VLAHOS, PERKINS & SHARP  
Legal Forum Building  
2447 Kiesel Avenue  
Ogden, Utah 84401

(Attorneys for  
Defendant-Respondent)

LYLE J. BARNES, ESQ.  
Villager Professional Building  
47 North Main, Suite #1  
Kaysville, Utah 84037

(Attorney for  
Plaintiff-Appellant)

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Clk's, Supreme Court, Utah

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 ALLENE CLOSE ADAMS, )  
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RESPONDENT'S BRIEF  
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STATEMENT OF THE KIND OF CASE

This Appeal is made by the Appellant from the final Order of the Honorable Douglas L. Cornaby, Judge of the District Court in and for the Second Judicial District Court, County of Davis, State of Utah, making a Judgment and finding that it was the intent of the decedent, Edith Branscomb, to leave her Estate equally between the Appellant and the Respondent, who were her son and daughter, and the sole heirs of the decedent, who died intestate.

### DISPOSITION IN LOWER COURT

The Court decreed that the assets left by the decedent, being her home and certain stocks, that one-half of the total value of the Estate shall go to each of the children, being the Respondent and the Appellant.

### RELIEF SOUGHT ON APPEAL

The Respondent seeks that the equitable Judgment of the Lower Court be upheld, and that the intestate estate shall be divided equally between the sole surviving heirs and beneficiaries of the decedent, namely that the Appellant and Respondent shall each share equally in the estate of the decedent.

### STATEMENT OF FACTS

Edith Branscomb, who was the mother of the Appellant and the Respondent, will hereinafter be referred to as the "Mother", and Douglas Fairbanks Close, who was the plaintiff in the Lower Court and is the Appellant in the matter before this Court will be referred to as the "Son", and Allene Close Adams, who was the defendant in the Lower Court and is the Respondent in the matter before this Court will be referred to as the "Daughter".

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The Mother became demised on December 26, 1977, at the age of 90 years. (T. 120) (R. 43)

In 1962, the Mother desired to prevent probate, and conveyed her home to be held in joint tenancy with herself and her Daughter. (T. 207) At the same time, the Mother conveyed 740 shares of Utah Power & Light Stock, which was the only other remaining assets which she had, to her Son. (T. 207) At the time of the conveyance of the Utah Power & Light Stock, the 740 shares had a value in 1962 of \$29,100.00. (R. 39)

The Court made a finding in the Lower Court, from the testimony that was given, that the nature of what the decedent was doing was transferring the property, so that she could avoid probate, by distributing her property to those who meant the most to her, and to whom she thought ought to have the property, and that the issuing of a Warranty Deed to the Daughter and the 740 shares of stock to the Son, was at that time a fair and equitable distribution of the property to her two sole surviving beneficiaries, her two children. (R. 195)

The Mother, while recovering from a series of strokes, commencing October 4, 1975, and continuing into March, 1977 (R. 94-99), when 89 years of age, did on July 29, 1977, give a Quit Claim Deed to the home which she shared in joint

### RESPONDENT'S BRIEF 3

tenancy with her Daughter, to the Son (R. 55), who now seeks to claim one-half of the real property, and all of the Utah Power & Light Stock, which at the time of the demise of the Mother, was 1,440 shares of Utah Power & Light Stock, with only one-half of the real property going to the Daughter.

### ARGUMENT

#### POINT I.

THAT THE APPELLANT, DOUGLAS CLOSE, IS THE CONSTRUCTIVE TRUSTEE OF THE EQUITABLE SHARE OF THEIR MOTHER'S ESTATE, INTENDED TO BE DEvised AND BEQUEATHED TO HIS SISTER.

The Mother, did in 1962, convey the assets of her Estate to her only two children and beneficiaries, namely the Appellant and the Respondent, by conveying the 740 shares of Utah Power & Light Stock to the Son (now through a stock split being 1,480 shares), and by her intent to convey the home and real property to her Daughter, by creating a joint tenancy of the property by a deed to herself and her Daughter. (T. 207, 208) The Mother had a cerebral vascular accident in September, 1975, at the age of 87 years. (See Records attached to R. 46) The Mother was transferred to a rehabilitation ward under the care of Dr. Bender, and was subsequently discharged for complete twenty-four hour care in her home. The Mother was re-admitted again in January, 1977, for additional complications and stroke, and she was



discharged on February 3, 1977, by her attending physician, Dr. Basil Williams, still suffering from numbness over the entire left side of her body. She remained under the direct care of Dr. Basil Williams until she was transferred to a rehabilitation unit under Dr. John Bender at the McKay-Dee Hospital. (See Records attached to R. 46)

Subsequent to her re-admission on January 16, 1977, by Dr. Williams, the medical records evidence as follows:

The patient is a weak lethargic white female, lying in bed who does not appear to be in acute distress, who is unable to give a medical history, but who will respond sluggishly to verbal commands, and makes an effort to cooperate.

The patient in this admission was 90 years of age. The report of the neurologist brought in for prognosis was Dr. G. T. Blanch, who stated:

The patient is arousible and will attempt to answer questions, but cannot provide a history. She has left facial weakness, signs of left hemiparesis. She is hyper, reflexic on the left side, with respect to the right.

The opinion of Dr. John Bender, in the Hospital Records as of January 24, 1977, stated:

At this point, Mrs. Branscomb appears to require a great deal of nursing care, and her capabilities for improvement are somewhat uncertain. She may be a candidate of a more prolonged hospital rehabilitation program, but the family and home assistance can provide increased personal care to this woman.

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The Hospital Records from January 28, 1977, state:

Slight but generalized cognitive deficits. These deficits are probably residuals from the previous C.V.A. and also age. Specific problems include rambling conversation, poor judgment, inability to understand current situations, even after situations have been explained, and short-term memory loss.

The Hospital Records of January 26, 1977, further states:

The patient is slightly disoriented, however, she will cooperate to some extent.

Dr. Williams, in the request for medical records from the counsel for the Respondent, made a prognosis regarding the condition of the Mother, wherein Dr. Basil Williams stated:

I did not see her again following that time (January, 1977). It was my feeling that from the time of her stroke until her demise that she was not competent to make sound decisions, and was relying upon her family to make decisions for her. The severity of her neurological deficit and impairment of her intellectual capacities, make me believe that any decisions she made after September 30, 1975, cannot be regarded as valid. (Exhibits attached to R. 46)

The Mother, upon her discharge on February 3, 1977, following her admittance on January 16, 1977 (T. 98) was released for home care, subject to her being provided twenty-four-hour-a-day assistance (T. 107). She was not

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seen again by Dr. Bender from March 24th until her demise in December, 1977. (T. 107, T. 100)

Janice Arnold was employed to care for the Mother, and did care for her for two years from 1975 to the demise of the Mother in 1977 (T 166, 177). Mrs. Arnold lived in with the Mother from Sunday evening until Friday night each week, at which time the Daughter would move in on Friday evening and stay until Sunday morning, caring for her Mother, with the Son coming in on Sunday during the daytime, and staying until Mrs. Arnold would again take up her weekly chore of caring for the Mother, commencing Sunday evening. (T. 118) Mrs. Arnold observed that the Mother's "mind kept failing the last year". (T 121)

Mrs. Arnold believed that the Mother's mental condition, as to comprehension, got worse the last six months prior to her demise (T. 121); that there were times that the Mother did not know what she was doing (T. 123); and that the Mother was unable to call her Daughter by her name and Mrs. Arnold did not know if she was recognizing her Daughter or not. (T. 124)

The Quit Claim Deed to the Son, made by the Mother, which conveyed away the joint tenancy rights of the Daughter to the Son was on a Friday, July 29, 1977, and the Deed was prepared by someone not identified, at the time when the Son

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and his wife were present, and out of the presence of Mrs. Arnold, with the wife of the Appellant acting as a witness to the Quit Claim Deed, and a Mrs. Engerman acting as a Notary. (T. 112) Mrs. Engerman had been called to come to the home to notarize a paper for the Mother, receiving a call about 6:00 or 6:30 p.m., and could not identify the person who had called her. (T. 109-111)

At the time that Mrs. Engerman arrived at the Mother's home, the Appellant and his wife were both in the room with the Mother, and neither Mrs. Arnold nor the Respondent were present at the time of the visit of the Appellant and his wife with the Mother, nor at the time of the signing of the already prepared Deed, by the Mother, wherein a transfer of the property was made (T. 115), approximately five months prior to the demise of the Mother. The Mother was 90 years of age at the time of said transfer.

In Haus v. Jensen, 209 P.2d 229 (1949), the Utah Supreme Court held constructive trusts as an equitable remedy and arises by operation of law, and is not within the statute of frauds, but is found to exist when necessary to prevent unjust enrichment.

In the case of Meinhard v. Salmond, 164 N.E. 545, 540 (1928), Justice Cardoza held, while serving on the New York Court of Appeals:

A constructive trust is, then, the remedial device through which preference of self is made subordinate to loyalty to others.

In Beatty v. Guggenheim Exploration Company, 122 N.E. 378, 380, Justice Cardoza, while serving on the New York Court of Appeals stated:

A constructive trust is a formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.

In Cordoba v. Wiswall, 436 P.2d 922 (1968), the Court held that constructive trusts do not arise by agreement or from the intention of the parties, but by operation of law. That by operation of law and being limitless in form are raised by courts of equity where necessary to effectuate justice and prevent inequity and unjust enrichment.

The Oklahoma Supreme Court in Phillips v. Ball, 358 P.2d 193 (1960), held that where a party obtains legal title to property by a violation of confidence or in any other unconscionable manner, equity will impress upon that party a constructive trust in the property so obtained, for the one who, in good conscience, is entitled to the property. Further, it was found that the defendant, being unjustly enriched at the expense of the plaintiff was entitled by

virtue of the doctrines of estoppel or unjust enrichment to have an equitable lien placed upon the property.

In the instant matter before the Court, we have the unquestioned intent of the Mother to convey the Utah Power & Light Stock to her Son, and the home to her Daughter, as a method of evading probate and to equitably divide her Estate between her only two children, and then five months prior to her demise, at a time she was 90 years of age, and had suffered a number of strokes, requiring twenty-four-a-day constant care, on July 29, 1977, just five months prior to her demise, the Mother signs a Quit Claim Deed with her Son and the Son's spouse present, and having excluded Mrs. Arnold and visiting the Mother on a day when the Daughter is also not present, a Notary Public, and then an already-prepared Deed was presented to the Mother for her signature, to convey the Mother's interest in the property as a joint tenant to the Son, and the Son's wife is asked to sign as a witness, not Mrs. Arnold, and now the Son is not only the possessor of the 1,480 shares of stock in the Utah Power & Light, from which he has personally received and benefited from all of the dividends and stock splits, since 1962, but is now also a one-half owner of the home.



The testimony of Mrs. Arnold, is set forth under oath as follows:

Q. Now let me ask you. Did you ever have a conversation with Mrs. Branscomb (the Mother) concerning the home and to whom it belonged to?

A. Yes.

Q. And was this over the whole two-year period you worked there?

A. Whole, yes.

Q. What did she say about the home?

A. She told me that she had given her home to her daughter, Mrs. Adams, and she told me that all the two years. (T. 121)

The entire record before the Court evidences no grasping, greed or avariciousness on the part of the Daughter, but to the contrary, her examination by attorney for the Appellant, evidences her feelings in the following dialogue:

A. You are asking that the court do one of two things, Mrs. Adams. You are asking that the court either take the stock and the home and divide them equally between you and your brother, take all the stock and the home, add it up and divide it equally; or your brother keep the stock and you keep the home; is that correct?

A. I guess you can say it that way.

Q. OK.

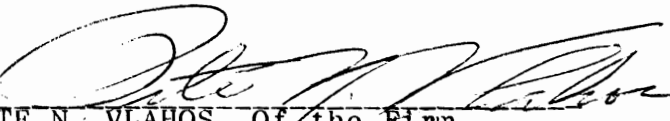
- A. I have always felt like the stock should have been his because that is what my mother decided, but she also decided I should have the home, but I don't know.  
(T. 210-211)

### CONCLUSION

It is submitted that the Lower Court, as a Court of equity, had a duty and the right to make an equitable distribution of assets to prevent unconscionable distribution of the Estate, and to carry out the original intent of the decedent Mother, and that the equal division of the Estate by giving to the Son and the Daughter one-half of the home, and each one-half of the Utah Power & Light Stocks, without requiring the Son to return any of the dividends which he received from the stock from 1962 to 1981, was a fair and equitable distribution in carrying out the intent of decedent Mother to her only two children, both of whom she loved. Equity and unjust enrichment requires affirming the judgment of the Lower Court.

RESPECTFULLY SUBMITTED this 28 day of April, 1982.

VLAHOS, PERKINS & SHARP


BY   
PETE N. VLAHOS, Of the Firm  
Attorneys for Respondent  
Legal Forum Building  
2447 Kiesel Avenue  
Ogden, Utah 84401



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28 day of April, 1982,  
I mailed a true and correct copy of the above and foregoing  
document, by placing same in the United States Mail, postage  
prepaid and addressed to the following:

Mr. Lyle J. Barnes, Esq.  
Attorney at Law  
Villager Professional Building  
47 North Main, Suite #1  
Kaysville, Utah 84037  
(Attorney for Appellant)

  
-----  
SECRETARY