

2017

**IN THE MATTER OF THE ESTATE OF JOYCE LUTZ MORRIS  
Deceased. CAROLYN PERKINS, H. CONWEY MORRIS, PAUL  
MORRIS, and JOYCE MORRIS Plaintiffs/Appellees vs. MARK L.  
MORRIS and DIANE MORRIS, Defendant/Appellant. : Brief of  
Appellant**

Utah Court of Appeals

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Richard H. Reeve; attorney for appellant.

Jack C. Helgesen, Erik S. Helgesen; attorneys for appellees.

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IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE ESTATE  
OF JOYCE LUTZ MORRIS

Deceased.

CAROLYN PERKINS, H. CONWEY  
MORRIS, PAUL MORRIS, and JOYCE  
MORRIS

Plaintiffs/Appellees

vs.

MARK L. MORRIS and DIANE  
MORRIS,

Defendant/Appellant.

Appellate Case No. 20170330-CA

Appealed from Civil No. 123900002

BRIEF OF APPELLANT

Appeal from the Second Judicial District Court in and for Weber County  
Case No. 123900002, Judge Brent West

Jack C. Helgesen  
Erik S. Helgesen  
**Helgesen, Waterfall & Jones, P.C.**  
1513 Hill Field Road, Suite 3  
Layton, Utah 84041  
*Attorneys for Appellees*

Richard H. Reeve  
**REEVE LAW GROUP, P.C.**  
5160 S. 1500 W.  
Ogden, Utah 84405  
*Attorney for Appellant*

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UTAH APPELLATE COURTS

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**IN THE UTAH COURT OF APPEALS**

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**IN THE MATTER OF THE ESTATE  
OF JOYCE LUTZ MORRIS**

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Jack C. Helgesen  
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1513 Hill Field Road, Suite 3  
Layton, Utah 84041  
*Attorneys for Appellees*

Richard H. Reeve  
**REEVE LAW GROUP, P.C.**  
5160 S. 1500 W.  
Ogden, Utah 84405  
*Attorney for Appellant*

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## INTRODUCTION

Nature of the case. This case involves a dispute between family members over their mother's estate. The appeal focuses on the narrow issue of the award of attorney fees to a personal representative for a successful and good faith defense of claims against the Estate. The Plaintiffs/Appellees (hereinafter referred to as the "Siblings"<sup>1</sup>) brought claims against the Estate of Joyce Lutz Morris (hereinafter referred to as the "Estate") and their brother Defendant/Appellant, Mark Morris (hereinafter "Mark" or "Mark Morris"). Mark Morris was designated by his mother, Joyce Lutz Morris, to serve as personal representative for the Estate and also served as his Mother's caretaker in the last years of her life. The Siblings challenged Mark's status as the personal representative of the Estate and challenged the end of life plan set up by their Mother and her private legal counsel. The Siblings also asserted claims against Mark's wife, Diane, and sought to override their Mother's estate plan and establish a constructive trust to administer the assets of the Estate. A five-day bench trial was held in late May and early June of 2016. The District Court confirmed the deceased's estate plan, denied the Sibling's claims and the request for the imposition of a constructive trust, and upheld the appointment of Mark Morris as personal representative. The District Court also determined that both the claims of the Siblings and the defenses of Mark Morris and Diane Morris were brought in good faith.

Course of proceedings relevant to this appeal. In the District Court's written

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<sup>1</sup> Max Morris, the youngest child of Joyce Lutz Morris did not participate in this matter as a party; however, he did serve as a fact witness for Mark Morris.

decision and subsequent Findings of Fact and Conclusions of Law, Judge Brent West declined to award Mark his attorney fees which he had requested from *both* the Estate and from the Siblings. Mark again asserted the issue of attorney fees and sought reimbursement of the attorney fees that he paid for out of his own personal funds from both the Estate and the Siblings in a Post-Trial Motion for Attorney Fees. The District Court denied Mark's Post-Trial motion in a final order that was entered on March 28, 2017. The District Court's decision denying attorney fees focused on Mark's second argument, that the Siblings reimburse Mark for his attorney fees but also failed to award Mark's attorney fees from the Estate. Mark and Diane Morris timely filed their Notice of Appeal, seeking a review of the Court's decision denying the request for attorney fees on April 13, 2017.

### **STATEMENT OF APPELLATE JURISDICTION**

The Utah Court of Appeals has appellate jurisdiction pursuant to Utah Code Ann. §78A-4-103(2)(j), over appeals from a final order of a district court that were transferred to the Court of Appeals from the Supreme Court.

### **STATEMENT OF THE ISSUES**

On appeal, Appellant asserts the following questions for review by the Utah Court of Appeals.

- 1. Did the District Court err by not ordering the Estate to reimburse Appellants' attorney fees pursuant to Utah Code Ann. § 75-3-719?**

Standard of Review: Appellate courts review the district court's interpretation of a statute on a correctness standard. *Gutierrez v. Medley*, 975 P.2d 913 (Utah 1993). "To

the extent that the denial of statutory attorney fees depends on an interpretation of the applicable statute, the district court's determination of what the law requires is reviewed for correctness." *Warner v. Warner*, 2014 UT App 16, 319 P.3d 711, 719 (Utah Ct. App. 2014).

Issue preserved in the record: This issue was preserved in the record. Appellants raised this issue at trial and in their Post-Trial Motion for Attorney Fees and documentation in support, filed on January 12, 2017. *See* Record at pp. 2692-705.

**2. Did the District Court err by not ordering the Siblings to reimburse Appellants' attorney fees?**

Standard of Review: Appellate courts review the district court's interpretation of a statute on a correctness standard. *Gutierrez v. Medley*, 975 P.2d 913 (Utah 1993). "To the extent that the denial of statutory attorney fees depends on an interpretation of the applicable statute, the district court's determination of what the law requires is reviewed for correctness." *Warner v. Warner*, 2014 UT App 16, 319 P.3d 711, 719 (Utah Ct. App. 2014).

Issue preserved in the record: This issue was preserved in the record. Appellants raised this issue at trial and in their Post-Trial Motion for Attorney Fees and documentation in support, filed on January 12, 2017. *See* Record at pp. 2692-705.

**STATEMENT OF THE CASE**

1. The decedent, Joyce Lutz Morris, passed away in November of 2011. *See* Complaint in the Record at pp. 0001-09.



2. The decedent, Joyce Lutz Morris, worked with her own independent legal counsel to set up her estate and end of life plan and appointed Mark Morris as the Personal Representative of the Estate to implement and advance her plans. *See* Decision and Findings of Fact and Conclusions of Law in the Record at pp. 2481-84 and 2502-07.

3. The decedent's estate and end of life plan was motivated by her concern that her estate would be diminished by repayment of expenses to Medicare for services rendered if she were placed in a care facility, so she adopted a plan in which she purchased Mark Morris' home and lived with him and his family. *See id.*

4. The decedent, Joyce Lutz Morris, was competent and capable of making her own decisions and suffered, at the end of her life, from physical and not mental impairments. *See id.*

5. The District Court determined that the decedent's estate and end of life plan was legal and reasonable and that Mark Morris was correct in seeing the plan through to completion. *See id.*

6. In the District Court, the Siblings filed and asserted numerous legal claims against the Estate and Mark Morris, including claims that Mark Morris breached his fiduciary duty and took advantage of his Mother. *See* Plaintiffs' Petition for Formal Probate in the Record at pp. 0001-08, Plaintiffs' Complaint in the Record at pp. 0433-58, Plaintiffs' Amended Complaint in the Record at pp. 0899-919, and Plaintiffs' Counter-Petition for Breach of Fiduciary Duties by the Personal Representative in the Record at pp. 0676-697.

7. The Siblings attempted to remove Mark Morris as the Personal Representative for the Estate and claimed that the Estate was compromised and needed to be replaced by a constructive trust to administer the Estate's assets. *See id.*

8. Mark Morris was forced by the Siblings claims to defend his role as personal representative of the Estate and to defend the estate and end of life plan set up by his Mother prior to her death. *See Record at pp. 2692-705*

9. Since the Estate did not have sufficient assets, Mark Morris was forced to pay for the Estate's legal fees from his personal funds. *See Record at pp. 2692-705. See also Order Denying Defendants' Post-Trial Motion for Attorney Fees and Plaintiffs' Request for Fees in Defending Motion in the Record at pp. 2797-800.*

10. Mark Morris also paid for the attorney fees needed to defend his role as Personal Representative of the Estate from his personal funds. *See Record at pp. 2692-705.*

11. In total, Mark Morris was forced to spend \$140,038.90 of personal funds, up to and through the bench trial, to defend the Estate, his mother's estate plan, and his role as Personal Representative of the Estate. *See id.*

12. The District Court, in its written decision, issued after multiple days of trial, ruled in Mark and Diane Morris' favor and denied Plaintiffs' challenges to the Joyce Lutz Morris' estate plan and the Mark Morris' implementation of that plan. *See Decision and Findings of Fact and Conclusions of Law in the Record at pp. 2481-84 and 2502-07.*

13. The District Court determined that Mark Morris defended the Estate in good faith. *See Id.*

14. In the District Court's written decision and order, Mark Morris was not awarded a reimbursement of the attorney fees that he expended during his defense of the Estate and his role as Personal Representative of the Estate. *See id.*

15. In its written decision and order, the District Court declined to award either party its attorney fees. *See* Decision and Findings of Fact and Conclusions of Law in the Record at pp. 2481-84 and 2502-07.

16. After the trial, Mark reasserted his claim, in a post-trial motion, for a reimbursement of his attorney fees from the Estate and from the Siblings pursuant to Utah Code. Ann. §75-3-719. *See* Record at pp. 2692-705.

17. The District Court did not conduct oral arguments on Mark's Post-Trial Motion for Attorney's Fees. *See* Record at pp. 2878-89.

18. The District Court denied both of Mark's claims for reimbursement of attorney fees on March 28, 2017. *See* Record at pp. 2797-800.

19. Mark Morris timely filed a Notice of Appeal on April 13, 2017. *See* Record at 2801-02.

### ARGUMENT

#### **I. THE DISTRICT COURT ERRED BY FAILING TO AWARD MARK MORRIS A REIMBURSEMENT OF HIS ATTORNEY FEES FROM THE ESTATE.**

Utah Code Annotated §75-3-719, provides the legal basis for Mark Morris' reimbursement of the attorney fees that he incurred in defending the Sibling's claims against Mark Morris and the Estate. The statute states as follows:

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate all necessary expenses and disbursements, including reasonable attorney fees incurred.

Utah Code Ann. §75-3-719.

Mark Morris met all the elements of this statute and, as such, was legally entitled, by statute, to a reimbursement of the attorney fees that he had to pay from his own pocket to defend his appointed role as personal representative of the Estate and his defense of his Mother's estate and end of life plan. The District Court determined, after receiving all the evidence at trial, that Mark Morris was appointed by Joyce Lutz Morris to serve as her personal representative. *See* Record at pp. 2481-84 and 2502-07. The estate plan was created by Joyce Lutz Morris and represented her intent. *See id.* Mark Morris was placed under a duty to administer Joyce Lutz Morris' plan. *See id.* The Siblings initiated multiple legal proceedings to challenge Mark Morris' appointment as personal representative and various provisions of the estate plan. *See id.* Mark Morris had a legal obligation, as personal representative, to defend claims for the "protection of the estate and of the personal representative in the performance of his duties." *See* Utah Code Ann. §75-3-714(22). The District Court determined that Mark Morris' defense was made in good faith<sup>2</sup>. *See* Record at pp. 2481-84 and 2502-07. In so doing, he has incurred a large

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<sup>2</sup> The Court also determined that the Siblings' prosecution of their claims was done in good faith; however, this determination appears to be irrelevant under the terms of Utah Code Ann. §75-3-719 since the personal representative is entitled under the statute to his attorney fees and costs whether or not the defense is successful or not. *See* Utah Code Ann. §75-3-719.

bill of attorney fees over the course of years of multiple and overlapping claims by the Siblings. *See Record* at pp. 2692-705. Pursuant to statute, Mark Morris is legally entitled to a reimbursement of his attorney fees from the Estate and the District Court clearly erred in denying Mark's claim for reimbursement of his attorney fees from the Estate.

For some reason, the District Court has failed to focus on and award attorney fees pursuant to Mark's primary argument that attorney fees should be awarded from the Estate pursuant to the statute. Instead, the District Court has focused almost exclusively on Mark's secondary argument that the Siblings be ordered to pay Mark's attorney fees. While Mark would prefer an award of fees, jointly and severally, from the Estate and the Siblings, his primary focus is to receive a reimbursement of fees from the Estate and the District Court erred in failing to order this reimbursement. Even if the Estate has insufficient assets to cover the full cost of Mark's attorney fees, an award of reimbursement would help offset the heavy costs of the Estate's defense. This Court should remand the proceedings to the District Court so that Mark's fees from the Estate may be determined and awarded.

## **II. THE DISTRICT COURT ERRED BY FAILING TO AWARD MARK MORRIS A REIMBURSEMENT OF HIS ATTORNEY FEES FROM THE SIBLINGS.**

Mark Morris asserted in the District Court that equity and fairness and the purpose of Utah Code Ann. §75-3-719 demanded that Mark Morris be allowed to seek a reimbursement of his fees from the Siblings. *See Record* at pp. 2692-705. In his motion, Mark argued that the District Court needed to equitably award attorney fees from the Siblings to avoid frustrating the clear purpose of the statute because of the financially

compromised status of the Estate. *See id.* Mark Morris argued below that to allow otherwise would defeat the purpose of the statute, result in a gross inequality and injustice in the outcome of this case, and would create a precedent in which no rational person would ever consent to serve as a personal representative for another's estate. *See id.* Without the benefit of oral argument, the District Court denied Mark's request for reimbursement of attorney fees from the Siblings. *See Record* at pp. 2787-89 and 2797-800.

The District Court erred in denying this portion of Mark's request for reimbursement of his attorney fees. Mark concedes that the relevant statute is limited in its plain language to reimbursement of attorney fees from the estate. *See Utah Code Ann. §75-3-719.* However, Mark asserts that the District Court had the discretion in equity and the ability to extend Utah Code Ann. §75-3-719 and Utah Code Ann. §75-1-310 to Mark's secondary request to receive a reimbursement of his attorney fees from the Siblings. In support of this argument, Mark Morris offers the following for the Court's consideration.

**I. A literal reading of Utah Code Ann. §75-1-719 should not viewed in isolation from its purpose.**

Mark urges the Court to not allow a literal reading of the language of Utah Code Ann. § 75-1-719 to frustrate the purpose of the statute. The Utah Court of Appeals has allowed the purpose of a statutory provision to augment the plain language of the statute when interpreting other statutory provisions involving the award of attorney fees. *See Jones v. Riche*, 216 P.3d 357, 360 (Utah Ct. App. 2009) (“[w]e must acknowledge that

the trial court's position and the Riches' argument on appeal are consistent with a literal reading of the statute, at least when viewed in isolation from its purpose—reflected in its title"). In *Jones*, the Court was interpreting Utah's reciprocal attorney fee statute and adopted a reading of the statute that differed from a literal reading of the statutory language. *See, generally, Jones*, 216 P.3d 357. In this matter, Mark Morris urges the Court to take apply this same rationale.

The purpose of Utah Code Ann. §75-1-719 is clear from its language and its context within Utah's probate code. The purpose of the statute is to protect personal representatives from the burden of paying, from their own pocket, for the prosecution of claims or the defense against claims on behalf of the decedent's estate. The statute appears designed to prevent personal representatives, often appointed without any input, to use their own funds to defend their required service to the maker of the estate. The probate code requires, as a fiduciary duty, personal representatives to defend the estate against claims and to fulfill the purpose of the estate's plan. *See Utah Code Ann. §75-3-714(22)*. It would be unfair to require a personal representative to defend the estate against claims—in other words, to essentially defend someone else's plan and ideas—with funds from their own pocket. Not only would such a result be unfair, the consequences of requiring personal representatives to pay for the estate's defense would make it difficult, if not impossible, to find anyone to serve as the personal representative for another's estate. No sane person would take on the job of representing another's estate plan if the costs of that job had to be born out of their own pocket. The legislature correctly realized this unfairness and dilemma and dealt with it by allowing personal

representatives to recover their fees from the estate, so long as the personal representative acted in good faith.

However, the legislature's solution to this problem that is found in Utah Code Ann. § 75-1-719 is almost completely frustrated when an estate lacks sufficient assets, liquid or otherwise, to compensate the personal representative for attorney fees incurred on the estate's behalf. In situations where there are not sufficient estate assets, the unfairness of requiring a personal representative to pay for attorney fees with his or her own personal funds, comes to the forefront. Certainly, the legislature does not want personal representatives to have to conduct a financial analysis of an estate before agreeing to serve as personal representative. Nor would the legislature want claimants against the estate to use litigation as a weapon in situations where the claimants know that the estate has insufficient assets or insufficient liquidity for the personal representative to use estate funds to defend against claims against the estate. It is unlikely that the legislature intended for the purpose of Utah Code Ann. § 75-1-719 to be determined by the amount of money held by an estate.

When confronted with a situation where the estate lacks assets to allow the personal representative to be reimbursed for reasonably-incurred attorney fees, the trial court should be given the discretion to determine whether or not there is sufficient assets available to reimburse the personal representative's attorney fees and to determine whether justice requires an award of attorney fees from those that brought claims against the estate.



In this matter, the District Court did not reach the issue of whether the Estate had sufficient assets to reimburse Mark Morris for the attorney fees that he paid for from his own personal funds because the District Court erred in viewing the literal language of the statute in isolation from its clear purpose and prematurely ended the analysis. However, Mark Morris did raise the issue of the sufficiency and liquidity of estate assets at trial and in his Post-Trial Motion for Attorney Fees. *See* Record at pp. 2692-705. And the District Court did acknowledge an insufficiency of funds in its Order Denying Defendants' Post-Trial Motion. *See* Record at pp. 2797-800. This Court should remand this matter back to the District Court to effectuate the purpose of Utah Code Ann. §75-1-719 and allow the court below to consider the assets of the estate and whether justice requires an award of attorney fees from the Siblings.

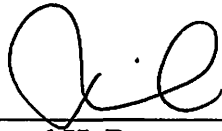
### **CONCLUSION AND RELIEF SOUGHT**

For the foregoing reasons, Appellants respectfully request that this Court grant Appellant's appeal in its entirety and remand the matter to the District Court for the following proceedings; (1) to calculate the amount of attorney fees that Mark Morris may claim against the Estate, (2) to determine whether the Estate lacked assets to reimburse Mark Morris for the attorney fees incurred, and (3) determine whether justice requires an award of attorney fees against the Siblings as part of fulfilling the purpose of Utah Code

Ann. § 75-1-719.

DATED this 22nd day of December, 2017.

**REEVE LAW GROUP, P.C.**



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Richard H. Reeve  
*Attorney for Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of December, 2017, I caused two copies (to HELGESEN, HOUTZ, & JONES, P.C.) and eight copies (including the original) to the Utah Court of Appeals, along with an electronic courtesy copy of Appellant's Brief on compact disc in searchable PDF format, as required under Utah Supreme Court Standing Order No. 8, to be delivered via first-class, U.S. mail to opposing counsel and via hand delivery to the Utah Court of Appeals at the following addresses:

Jack C. Helgesen  
Erik S. Helgesen  
HELGESEN, HOUTZ, & JONES, P.C.  
1513 Hill Field Road, Suite 3  
Layton, Utah 84041

Utah Court of Appeals  
450 South State Street  
Salt Lake City, Utah 84111

*/s/ Estacia Lara*

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# ADDENDUM

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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

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IN THE MATTER OF THE ESTATE OF  
JOYCE LUTZ MORRIS,

Deceased.

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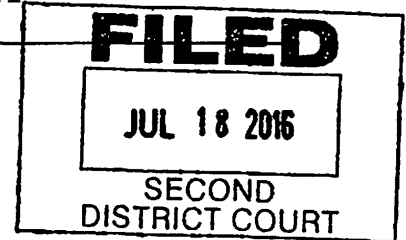
CAROLYN PERKINS, H. CONWEY  
MORRIS, PAUL MORRIS and JOYCE  
THOMPSON,

Plaintiffs,

vs.

MARK L. MORRIS and DIANE MORRIS,

Defendants.



**DECISION**

Case No. 123900002 ES  
Honorable W. Brent West

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After having taken this case under-advisement, the Court finds for the Defendants Mark L. Morris and Diane Morris. The Court finds that there is no clear and convincing evidence to support the imposition of a constructive trust on the estate of Joyce Lutz Morris, hereinafter referred to as Joyce. In fact, the evidence supports a finding that Joyce's estate plan ended up exactly as she planned it. Admittedly, Joyce, while she was alive, was faced with several different ways to plan her estate. Each plan had its own strengths and weaknesses. Also, no particular plan could satisfy all of Joyce's concerns. Joyce was faced with difficult choices. The fact that she chose a particular plan to avoid certain circumstances, which fortunately didn't occur, doesn't justify the imposition of a constructive trust..

The evidence supports a finding that Joyce was competent and capable of making her own decisions. Her impairments, if any, were physical, not mental. Although she relied heavily upon the

advice of her son, the Defendant, Mark L. Morris, Joyce made her own decisions. Apparently, Joyce was more concerned that her estate would be diminished by repayment of expenses to Medicare for services rendered if she were placed in a care facility than she was about running the risk of not protecting her assets and hoping there would be sufficient assets to distribute equally to her children, upon her death. As a result, she chose a plan that she thought would both protect her estate and still be able to distribute assets to her children. It turned out that her concerns about losing most of her estate to Medicare were unfounded. But, that is based on 20-20 hindsight. At the time she made her decision there was a real possibility, given her physical health, she could have ended up in a care facility for a long period of time. A protracted stay in a care facility would have dissipated her estate, leaving little to her children. Instead, she developed a plan, in connection with her lawyer, that provided her with care, provided her with a place to live and sheltered a large portion of her estate from Medicare. The plan was thought out and eventually reduced to writing. Her chosen plan was legal. Unfortunately, from the Plaintiff's point of view, her plan placed a moral duty, but not a legal duty, upon her son, the Defendant Mark L. Morris to eventually carry out her wishes. Although, there were errors made in the plan that have seriously impacted the economic feasibility of the plan, the Defendant Mark L. Morris is still under a moral obligation to complete his mother's plan and he has not failed to see her plan through to completion.

Probably the most controversial aspect of Joyce's plan was the decision, by her and the Defendants, to sell her home and purchase the Defendants' home for \$600,000.00. The Plaintiffs have severely criticized the \$600,000.00 value placed on the Defendants' home. They provided evidence that, both now and at the time the sale was implemented, the fair market value of the Morris' home was closer to between \$400,000.00 and \$450,000.00 and that the Morris' have been unjustly enriched. They also claim that this unjust enrichment was directly the result of Joyce's

reliance on her son Mark's advice and support. While a prima facie case can be made, by the Plaintiffs, for this proposition, when the Court looks at the entire situation, there is good reason to support a finding that Joyce reasonably made the decision to use the \$600,000.00 value because it actually shielded more of her estate from a possible Medicare lien and as a result would have allowed more of her estate to be distributed to her children. Again, as previously mentioned, Joyce was extremely concerned about maximizing the value of her estate that could be legally shielded from Medicare and her estate planning was driven by that concern. Given her overriding concern, her decision to accept the \$600,000.00 fair market value was reasonable. The Plaintiffs are second guessing her decision, after the fact, and with hindsight because her fears and concerns ended up not being realized. Fortunately, Joyce ended up not having to spend much time in a care facility at the end of her life and as a result did not dissipate much of her estate.

The Court simply cannot make a finding that the Defendant Mark L. Morris took advantage of any family or fiduciary relationship in causing or influencing Joyce to accept the \$600,000.00 value figure in the sale of the Defendants home.

In addition, since Joyce passed away before the purchase price was paid in full, the Defendants are entitled to be reimbursed the balance due and owing on the unpaid promissory note.

Finally, neither party is entitled to attorneys fees. There is no legal basis to award fees and the Court finds that both sides prosecuted and defended their causes of action in good faith. Lastly, the Defendants are entitled to their court costs. Counsel for the Defendants will please prepare findings of facts, conclusions of law and a final order consistent with this ruling.

Dated this 14th day of July 2016.



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W. BRENT WEST  
DISTRICT COURT JUDGE

**CERTIFICATE OF NOTIFICATION**

I HEREBY certify that I delivered a true and correct copy of the foregoing Decision to the following parties this 14th day of July, 2016, as follows:

JACK C. HELGESEN  
ERIK S. HELGESEN  
*Attorneys for Plaintiffs*  
1513 Hill Field Road, Suite 3  
Layton, Utah 84041

RICHARD H. REEVE  
*Attorney for Defendants*  
1957 Maple Grove Way  
Ogden, Utah 84401



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Judicial Assistant




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<p><b>RICHARD REEVE</b> <b>SANDRA REEVE</b> Platinum Membership Valued Customer Since 2015</p>  <p>Form A022 (03/11)</p> <p><b>IF YOU'RE IN AN ACCIDENT</b> 1. Remain at the scene. Don't admit fault. 2. Find a safe location, call the police, and exchange driver information. 3. Call Progressive right away.</p> <p><b>TO REPORT A CLAIM</b> Call 1-800-274-4499 or go to <a href="http://claims.progressive.com">claims.progressive.com</a>.</p> <p><b>NEED ROADSIDE ASSISTANCE?</b> Call 1-800-776-2778.</p> <p><b>PROGRESSIVE</b></p> <p>KEEP THIS CARD IN YOUR VEHICLE WHILE IN OPERATION.</p>	<p><b>INSURANCE IDENTIFICATION CARD - Utah</b></p> <p><b>Policy Number:</b> 908046024      <b>NAIC Number:</b> 42994 <b>Effective Date:</b> 07/06/2017      <b>Expiration Date:</b> 01/06/2018 <b>Insurer:</b> Progressive Classic Insurance Co 1-800-876-5581 PO Box 6807 Cleveland, OH 44101</p> <p><b>Named Insured(s):</b> RICHARD REEVE SANDRA REEVE</p> <p><b>Your Agent:</b> COTTONWOOD AGCY INC 1-801-943-5700 PO BOX 711169 SALT LAKE CITY, UT 84171</p> <table><thead><tr><th>Year</th><th>Make</th><th>Model</th><th>VIN</th></tr></thead><tbody><tr><td>2015</td><td>Jeep</td><td>Wrangler Rubicon</td><td>1C4BJWFG2FL612270</td></tr><tr><td>2015</td><td>Jeep</td><td>Wrangler Rubicon</td><td>1C4BJWCGXFL718227</td></tr></tbody></table> <p>Manage your policy anytime with just a few clicks at <b><a href="http://progressiveagent.com">progressiveagent.com</a></b></p>	Year	Make	Model	VIN	2015	Jeep	Wrangler Rubicon	1C4BJWFG2FL612270	2015	Jeep	Wrangler Rubicon	1C4BJWCGXFL718227
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2015	Jeep	Wrangler Rubicon	1C4BJWCGXFL718227										

The Order of the Court is stated below:

Dated: August 31, 2016  
10:15:09 AM

/s/ W BRENT WEST  
District Court Judge



**REEVE LAW GROUP, P.C.**  
Richard H. Reeve (11291)  
5160 South 1500 West  
Riverdale, Utah 84405  
Telephone: (801) 389-9733  
[reeve@reevelawgroup.com](mailto:reeve@reevelawgroup.com)  
*Attorneys for Defendants*

**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, PROBATE DEPARTMENT**

IN THE MATTER OF THE ESTATE OF JOYCE  
LUTZ MORRIS,

Deceased.

CAROLYN PERKINS; H. CONWEY MORRIS;  
PAUL MORRIS; and JOYCE THOMPSON

Plaintiffs,

v.

MARK L. MORRIS and DIANE MORRIS

Defendants.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No.: 123900002

Honorable W. Brent West

The above matter came regularly before the Honorable W. Brent West, Judge of the above court, on six (6) days of trial from May 22, 2016 to June 2, 2016. The Court took the matter under advisement on the final day of trial and issued an written opinion on the

matter on or about July 18, 2016.

THE COURT, having reviewed the record of facts presented at trial by the parties and being fully apprised in the premises, enters its Findings of Fact and Conclusions of Law as follows:

**I. FINDINGS OF FACT.**

The Court finds:

1. That the decedent, Joyce Morris, set up an estate plan in order to deal with the concerns that she had as she entered the last years of her life.
2. That Joyce was competent and capable of making her own decisions. Her impairments, if any, were physical, not mental.
3. That although she relied heavily on the advice of her son, the Defendant, Mark L. Morris, Joyce made her own decisions.
4. That Joyce was confronted between choosing between competing priorities and no one plan satisfied all her concerns and each plan had its strengths and weaknesses.
5. That Joyce was more concerned that her estate would be diminished by repayment of expenses to Medicare for services rendered if she were placed in a care facility than she was running the risk of not protecting her assets and hoping there would be sufficient assets to distribute equally to her children.
6. That at the time she made her plan there was a real possibility, given her physical health, that she could have ended up in a care facility for a long period of time.
7. That Joyce's estate plan ended up exactly as she planned it.

8. That Joyce's plan was thought out and eventually reduced to writing with the assistance of Joyce's legal counsel. Her chosen plan was legal.

9. That Joyce's plan placed a moral duty, but not a legal duty, upon her son, the Defendant Mark L. Morris to eventually carry out her wishes.

10. That Mark L. Morris has not failed to see Joyce's plan through to completion.

11. That the most controversial part of Joyce's plan was the decision to sell her home and purchase the Defendants' home for \$600,000.00.

12. That Joyce reasonably made the decision to use the \$600,000.00 value because it actually shielded more of her estate to be distributed to her children. Given Joyce's overriding concern to maximize the value of her estate that could be legally shielded from Medicare, her decision to accept the \$600,000.00 was reasonable.

13. That Plaintiffs are second guessing Joyce's decision with the benefit of hind sight, after the fact, because Joyce's fears and concerns ended up not being realized.

14. That Defendant Mark L. Morris did not take advantage of any family or fiduciary relationship in causing or influencing Joyce to accept the \$600,000.00 value figure in the sale of the Defendants' home.

## **II. CONCLUSIONS OF LAW:**

The Court concludes and rules:

15. That there is no clear and convincing evidence to support the Plaintiffs' imposition of a constructive trust on the estate of Joyce Lutz Morris. Therefore, Plaintiffs' claim for the imposition of a constructive trust fails.

16. That Defendants were not unjustly enriched by Joyce's reasonable decision to

purchase Defendants' home for \$600,000.00. Therefore, Plaintiffs' claim for unjust enrichment fails.

17. That Defendants did not take advantage of or breach any family or fiduciary relationship in influencing Joyce in the creation and implementation of her estate plan. There fore, Plaintiffs' claims that Mark Morris breached his duties, unduly influenced Joyce, or improperly abused the trust placed in him by Joyce all fail.

18. That Defendants are entitled to be reimbursed the balance due and owing to them under the terms of the unpaid promissory note.

19. That there is no award of attorney's fees.

20. That Defendants are entitled to their court costs.

DATED this \_\_\_\_\_ day of August, 2016.

***\*\*\*Executed and entered by the Court as indicated by the date and seal at the top of the first page\*\*\****

APPROVED AS TO FORM:

Jack Helgesen, *Attorney for Plaintiffs*

/s/ Jack Helgesen, Approved as to Form  
\_\_\_\_\_

**CERTIFICATE OF MAILING**

Pursuant to Rule 7(f)(2) of the *Utah Rules of Civil Procedure*, the undersigned will

submit the foregoing to the Honorable W. Brent West, District Court Judge, for signature upon the expiration of five (5) days after the submission of this document to you, unless written objection is filed prior to that time.

I hereby certify that on this 22nd day of August, 2016, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing *[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW* to:

***Via Email Only:***

Jack C. Helgesen  
Erik S. Helgesen  
HELGESEN, WATERFALL&JONES, P.C.  
1513 Hill Field Road, Suite 3  
Layton, Utah 84041  
*Attorney for Plaintiffs*

/s/ Richard Reeve

---

The Order of the Court is stated below:

Dated: March 28, 2017  
10:13:50 AM

/s/ W BRENT WEST  
District Court Judge



Jack C. Helgesen #1451  
Erik S. Helgesen #13740  
HELGESEN, HOUTZ & JONES, P.C.  
1513 Hill Field Road, Suite 3  
Layton, Utah 84041  
Telephone: (801) 544-5306  
Facsimile: (801) 614-0443  
[jack@utahattorneys.com](mailto:jack@utahattorneys.com)  
[ehelgesen@utahattorneys.com](mailto:ehelgesen@utahattorneys.com)

*Attorneys for Plaintiffs*

IN THE SECOND JUDICIAL DISTRICT COURT  
WEBER COUNTY, STATE OF UTAH

IN THE MATTER OF THE ESTATE OF

JOYCE LUTZ MORRIS

Deceased.

CAROLYN PERKINS, H. CONWEY  
MORRIS, PAUL MORRIS and JOYCE  
THOMPSON

Plaintiffs,

v.

MARK L. MORRIS and DIANNE MORRIS,

Defendants.

**ORDER DENYING DEFENDANTS'  
POST-TRIAL MOTION FOR  
ATTORNEYS FEES AND PLAINTIFFS'  
REQUEST FOR FEES IN DEFENDING  
MOTION**

Civil No. Probate No. 123900002

Judge: Honorable W. Brent West

On January 12, 2017, Defendants' filed a Motion for Post-Trial Motion for Attorneys Fees. The Court having reviewed Defendants' Motion and Memoranda as well as Plaintiffs' Memoranda in Opposition of Personal Representatives Post-Trial Motion for Attorneys Fees and Request for Fees in Defending Motion, filed on January 24, 2017, THE COURT NOW ENTERS



ITS DECISION:

1. The Defendants' Mark and Diane Morris' Request for Attorneys' Fees against the Plaintiffs is denied.
2. There is no legal basis, in this case, to award attorneys' fees to the Defendants against the Plaintiffs.
3. As previously stated in its July 18,2016 Ruling, the Court found "there is no legal basis to award fees .... " Utah Code Annotated Section 75-3-719 does not alter that Ruling. Section 75-3-719 UCA does allow the Defendants to be reimbursed, from the estate, attorneys' fees for their good faith defense of the estate. It does not allow those fees to be assessed against the Plaintiffs. This is especially so, since the Court found that both parties were acting in good faith.
4. It may be unfortunate that there are insufficient funds in the estate to reimburse the Defendants, but that insufficiency does not create any legal or equitable obligation on behalf of the Plaintiffs to bear any or all of those attorneys' fees. In fact, one of the factors contributing to the insufficiency of the estate's assets is the fact that the home, that was central to this dispute, was vastly overvalued. That valuation was attributable to the Defendants and the deceased Joyce Lutz Manis, but not the Plaintiffs. Although the Plaintiffs challenged that evaluation, they did not participate in making that evaluation.
6. The last issue the Court needs to decide is whether of not the Plaintiffs should be awarded their reasonable attorneys' fees for having to defend against what they consider to be the Defendants' "bad faith" motion requesting an award of attorneys' fees pursuant to Section 75-3-719 UCA.

7. The Plaintiffs' allege that the Defendants purposely attempted to mislead the Court by not quoting the entire Code Section 75-3-719 in their brief. Plaintiffs' allege that the Defendants purposely failed to quote the entire statutory provision accurately. Plaintiffs argue that by leaving out the words, "from the estate" in their argument, the Defendants left the distinct impression that attorneys' fees could be awarded against another party as opposed to being allowed as an expense against the estate.

8. As a result, the Plaintiffs are asking that their attorneys' fees be awarded for defending against the motion which they allege was brought in bad faith. See UCA Section 78B-5-825.

9. While the Court is troubled by the Defendants' brief and their leaving out the words, "from the estate," their arguments were basically made in a good faith effort to be awarded their attorneys' fees. The issues they raised, in their motion, had not been addressed previously.

10. As a result, each side will bear their own attorneys' fees on this motion.

*Entered by the Court as indicated by the electronic signature, date, and seal on first page*

Approved as to form

/s/ Richard H. Reeve  
Richard H. Reeve  
Attorney for Defendants  
(electronically signed with permission)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of March 2017, I caused to be served the foregoing **ORDER DENYING DEFENDANTS' POST-TRIAL MOTION FOR ATTORNEYS FEES AND PLAINTIFFS' REQUEST FOR FEE IN DEFENDING MOTION** upon the parties of record in this proceeding set forth below by the method indicated:

Richard H. Reeve (11291) REEVE LAW GROUP, P.C. 5160 S. 1500 W. Riverdale, UT 84405 <a href="mailto:rreeve@reevelawgroup.com">rreeve@reevelawgroup.com</a>	<input checked="" type="checkbox"/> Electronic Filing <input type="checkbox"/> Email <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail, 1 <sup>st</sup> Class, Postage Prepaid <input type="checkbox"/> Hand Delivery
Max L. Morris 4999 Burch Creek Drive South Ogden, UT 84403	<input type="checkbox"/> Electronic Filing <input type="checkbox"/> Email <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> U.S. Mail, 1 <sup>st</sup> Class, Postage Prepaid <input type="checkbox"/> Hand Delivery

/s/ Samantha J. Smith  
Paralegal