

2017

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

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

<p>IN THE MATTER OF THE ESTATE OF JOYCE LUTZ MORRIS</p> <p>Deceased.</p> <p>MARK L. MORRIS and DIANE MORRIS</p> <p>Defendants/Appellants,</p> <p>vs.</p> <p>CAROLYN PERKINS, H. CONWEY MORRIS, PAUL MORRIS, and JOYCE MORRIS</p> <p>Plaintiffs/Appellees.</p>	<p>Utah Court of Appeals Case No.: 201703301-CA</p> <p>Second Judicial District Court Case No.: 123900002</p>
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BRIEF OF THE APPELLEES

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
WEBER COUNTY, STATE OF UTAH
HONORABLE BRENT WEST

Richard H. Reeve
REEVE LAW GROUP, P.C.
5160 S. 1500 W.
Ogden, UT 84405
Telephone: (801) 389-9733

Jack C. Helgesen
Erik S. Helgesen
HELGESEN, HOUTZ & JONES, P.C.
1531 Hill Field Road #3
Layton, UT 84015
Telephone: (801) 544-5306
Fax: (801) 628-8328

Attorneys for Appellees

Attorneys for Appellees

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UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE ESTATE OF
JOYCE LUTZ MORRIS

Deceased.

MARK L. MORRIS and DIANE
MORRIS

Defendants/Appellants,

vs.

CAROLYN PERKINS, H. CONWEY
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MORRIS

Plaintiffs/Appellees.

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Richard H. Reeve
REEVE LAW GROUP, P.C.
5160 S. 1500 W.
Ogden, UT 84405
Telephone: (801) 389-9733

Attorneys for Appellees

Jack C. Helgesen
Erik S. Helgesen
HELGESEN, HOUTZ & JONES, P.C.
1531 Hill Field Road #3
Layton, UT 84015
Telephone: (801) 544-5306
Fax: (801) 628-8328

Attorneys for Appellees

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I. INTRODUCTION

This is an appeal from a denial of a statutory and equitable attorneys fee award in a post trial motion. The motion was filed by Mark Morris, whose siblings had sued him but lost on a claim for unjust enrichment and breach of his confidential relationship with their mother, Joyce Morris. The dispute arose after Joyce's death when Mark's four siblings discovered that Mark had helped impoverish Joyce by transferring several thousand dollars of Joyce's assets to himself and his wife, Diane. The impoverishing transfers were for the purpose of qualifying Joyce for Utah Medicaid nursing home benefits.

Following the convention used in the brief of Appellant Mark Morris, Mark Morris and his wife Diane Morris are referred to in the singular "Mark Morris." The four Appellees will refer to themselves as "Siblings," the term used in the brief of Mark Morris.

II. STATEMENT OF THE ISSUES

1. Why does Mark Morris complain that the trial court did not order an attorneys fee award from the probate estate when he did not ask for such award?

The standard of review for the sufficiency of a motion is a correction of error standard.

2. Did the trial Court err in denying Mark Morris an equitable award of attorneys fees against his Siblings in their legal action for unjust enrichment and breach of duties in a confidential relationship?

The standard for appellate review of a denial of equitable attorneys fees is whether the trial court abused its discretion. *Hughes v. Cafferty*, 2004 UT 22, ¶ 20, 89 P.3d 148. The “court must ascertain whether the equities of a given case justify the use of its inherent and discretionary power to award fees.” *Id.* In this task a “trial court is accorded considerable latitude and discretion.” *Id.*, quoting *Thurston v. Box Elder County*, 892 P.2d 1034, 1041 (Utah 1995).

III. STATEMENT OF THE CASE.

Appellees add these facts to the Appellants’ Statement of the Case.

1. Appellant Mark Morris describes an “end of life plan” followed by his Mother Joyce Morris. (Brief of Appellant, Statement of the Case, page 7, paragraphs 2-5). The purpose of this plan was to impoverish Mark’s mother, Joyce Morris, to qualify her for Utah Medicaid¹ nursing home assistance by transferring all of her assets to Mark Morris. In the years before her death, Joyce transferred more than \$600,000 in assets to Mark.

2. In a writing to Mark Morris, Joyce Morris placed a “moral duty” on Mark Morris to share her assets with his two brothers and two sisters after her death. (*See* Record at 2482, July 18, 2016 Decision, page 2.)

¹ Though this is not material to the case, Appellant Mark Morris in his brief and the trial court in its July 18, 2016 Decision, incorrectly identify the program as Medicare. Mark assisted his mother Joyce Morris to impoverish herself to qualify for Utah Medicaid nursing home assistance, an asset-based entitlement program. Medicare is not an asset-based program.

3. When they discovered the transfers after Joyce's death, Mark's Siblings (using the identifier in Appellants' brief), sued Mark and Diane Morris for unjust enrichment and breach of the duties of a confidential relationship, asking the Court to impose a constructive trust either in favor of the Siblings or in favor of Joyce's estate.

4. As a central feature of her end of life plan, Joyce purchased Mark's house for \$600,000 and later deeded it back to him. (*See Record at 2482-2483, July 18, 2016 Decision, pages 2-3.*) After trial, the Court found the house to be worth no more than \$400,000 to \$450,000. (*See Record at 2482, July 18, 2016 Decision, page 2.*)

5. After trial, the Court ruled in favor of the defendants, Mark and Diane Morris, concluding that the "moral duty" Joyce placed on Mark was not a legal duty which could be enforced in equity. He was, the Court wrote "under a moral obligation to complete his mother's plan. (*See Record at 2482, July 18, 2016 Decision, page 2; Also see Record at 2504, August 31, 2016 Findings of Fact, facts 8 and 9.*)

6. As to an award of attorneys fees, the Court wrote: "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." (*See Record at 2483, July 18, 2016 Decision, page 3.*)

7. On January 12, 2017, Mark Morris filed his motion and memorandum in support for an award of attorneys fees against the Siblings for attorneys fees under Utah Code Ann. § 75-3-719, and under general fairness principles, complaining that the estate

had insufficient assets to reimburse Mark Morris for his attorneys fees.

8. Contrary to Mark Morris' assertion (Statement of the Case, ¶ 18), the Court did not deny his right to reimbursement from the estate. The Trial Court entered its Decision on March 7, 2017, finding,

There is no legal basis, in this case, to award attorneys' fees to the Defendant against the Plaintiffs. 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. Utah Code Annotated Section 75-3-719 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 Plaintiffs.

Record at 2787, March 7, 2017 Decision (Motion for Attorney Fees) page 1 (emphasis).

9. The Siblings did not contest Mark Morris' right to have his attorneys fees reimbursed from the probate estate under the plain meaning of Utah Code Annotated Section 75-3-719. (See Record at 2762-2763, Memorandum in Opposition of Personal Representative's Post-trial Motion for Attorneys Fees, pages 3 and 4.)

10. The Court denied an equitable award of attorneys fees under 75-3-719 because Mark Morris, not the Siblings, contributed to the insufficiency of funds in his mothers estate by impoverishing her, especially by overpricing the home he sold to his mother. The Court wrote:

Utah Code Annotated Section 75-3-719 ... does not allow those fees to be assessed against Plaintiffs. This is especially so, since the Court found that both parties were acting in good faith. 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 Morris, but not the Plaintiffs. Although the Plaintiffs challenged that evaluation, they did not participate in making that evaluation.

Record at 2787-2788, March 7, 2017 Decision (Motion for Attorney Fees) pages 1 and 2.

IV. SUMMARY OF ARGUMENT

Appellant Mark Morris did not receive an award of his attorneys fees from the estate of Joyce Morris because he did not ask for it in his motion. The Trial Court expressly recognized his right to collect from the estate, but Mark asked only for an award of fees against his Siblings.

The Trial Court properly considered and denied an equitable award of attorneys fees against the Siblings. In his memorandum, Mark Morris acknowledged the Court's findings that both parties acted in good faith in the litigation. His equitable arguments concerned only the insufficiency of funds in the estate to reimburse his fees. The Court weighed those equities and noted that Mark Morris helped cause the insufficiency of funds in the estate by impoverishing his mother through transfers of her assets to him, especially in overcharging her for the "vastly overvalued" house (*See* Statement of the Case, ¶¶ 1, 4 and 9)

V. ARGUMENT

ISSUE 1: Mark Morris did not receive an award of fees from the estate only because he did not ask for it. The Siblings did not contest his right to reimbursement

from the estate, and the Trial Court expressly recognized his right.

A. He did not seek an award from the estate. Mark Morris based his motion solely on Utah Code Ann. §75-3-719, under which a “personal representative is entitled to receive from *the estate* all necessary expenses and disbursements, including reasonable attorney fees incurred” (emphasis added). (*See* Record at 2697, Memorandum in Support of Personal Representative’s Post-trial Motion for Attorney’s Fees, page 3.)

Although the statute pertains only to reimbursement from “the estate,” Mark argued in his memorandum that requiring him to seek an award from the estate would be very unfair. Instead, he argued that the award should come from his Siblings, not from the estate.

As a result, Mark Morris asserts that the reimbursement of his fees should come as a judgment against Plaintiffs, since it was Plaintiffs’ claims that required Mark Morris to defend his appointment and Joyce Lutz Morris’ estate plan. Between the two parties, equity and fairness dictates that Plaintiffs bear the burden of the fees incurred in the successful defense of the estate. To impose a reimbursement from the estate in this situation would have the effect of imposing the burden on Mark Morris and would completely frustrate the clear intent of the statute to not burden the personal representative with the personal defense of the someone else’s estate plan.

Record at 2699, Memorandum in Support of Personal Representative’s Post-trial Motion for Attorney’s Fees, page 5.

In concluding his memorandum, Mark Morris asked only for the Court to “enter a judgment for those fees and costs as against Plaintiffs.” *Id.*

B. The Siblings did not contest and the Trial Court expressly acknowledged the right of Mark Morris to obtain reimbursement of fees from the estate, but Mark did not seek reimbursement. Siblings did not contest the right of Mark Morris to reimbursement of his fees from the estate (Siblings' Statement of the Case, par. 8). In the first paragraph of the Court's Decision on the motion for fees, it wrote. "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." (See Record at 2787, March 7, 2017 Decision, page 1, Morris' Statement of the Case, par. 9).

There is no error here.

C. Remand is unnecessary because the Court declared Morris' right to reimbursement from the probate estate. (*Id.*) As the Personal Representative of the probate estate, Mark Morris has power to pay claims without a court order, especially those the Trial Court has declared to be lawful (Utah Code Ann. §75-3-714(27))("Except as restricted by the code, ... or by an order ... a personal representative may properly: ... satisfy and settle claims and distribute the estate as provided in this code").

No remand is necessary.

ISSUE 2: There was no abuse of discretion in the Trial Court's denial of equitable attorneys fees.

A. Mark Morris asked the Court to ignore it's findings that the Siblings had prosecuted their action in good faith. Mark Morris argued that the Siblings' good faith in prosecuting their unjust enrichment and breach of confidential duty action was irrelevant because of his misreading of Utah Code Ann. §75-3-719 as allowing a direct claim for attorney's fees against an adverse party. In his words,

The Court also determined that Plaintiffs prosecution of its 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's fees and costs whether or not the defense is successful or not.

Record at 2698, Memorandum in Support of Motion for Attorneys Fees, Footnote 2 on page 2.

B. The Trial Court considered and rejected with good reason an award of equitable attorneys fees against the Siblings. Mark Morris' equitable arguments concerned only the insufficiency of funds in the estate to reimburse his fees. The Court weighed those equities and noted that Mark Morris helped cause the insufficiency of funds in the estate by impoverishing his mother through transfers of her assets to him, especially in overcharging her for the "vastly overvalued" house. The Siblings, the Court wrote, "did not participate in making that evaluation" of the house. (*See above, Statement of the Case, ¶¶ 1, 4 and 10*).

The Court's assessment of the equities between the parties is supported by the general equitable principle that "a party [who] comes into equity for relief . . . must show that his . . . conduct has been fair, equitable, and honest as to the particular controversy in issue." *Goggin v. Goggin*, 2013 UT 162, 299 P. 3d 1079, P60 quoting 27A Am. Jur. 2d Equity § 98 (2012).

C. The Trial Court should be accorded abundant discretion in this matter. The Trial Court had the benefit of every filing on the case and heard all the facts and circumstances in multi-week trial of the case.

The Court has done its legal duty and has taken care to "ascertain whether the equities of a given case justify the use of its inherent and discretionary power to award fees." *Hughes v. Cafferty* at ¶ 20. In this task a "trial court is accorded considerable latitude and discretion." *Id.*, quoting *Thurston v. Box Elder County*, 892 P.2d 1034, 1041 (Utah 1995).

VI. CONCLUSION

The ruling of the Trial Court should be affirmed.

DATED this 26th day of February 2018.

HELGESEN, HOUTZ & JONES, P.C.



JACK C. HELGESEN

ADDENDUM

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

FILED

MAR 07 2017

SECOND
DISTRICT COURT

IN THE MATTER OF THE ESTATE OF
JOYCE LUTZ MORRIS,

Deceased,

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

The Defendants' Mark and Diane Morris' Request for Attorneys' Fees against the Plaintiffs is denied. There is no legal basis, in this case, to award attorneys' fees to the Defendants against the Plaintiffs. 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. 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

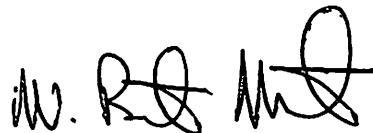
attributable to the Defendants and the deceased Joyce Lutz Morris, but not the Plaintiffs. Although the Plaintiffs challenged that evaluation, they did not participate in making that evaluation.

The last issue the Court needs to decide is whether or 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. 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. 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.

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

The Plaintiffs' counsel will please prepare a short Order, consistent with this Ruling.

Dated this 7th day of March 2017.



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 7th day of March, 2017, as follows:

JACK C. HELGESEN
Attorney for Plaintiffs
1513 Hill Field Road, Suite 3
Layton, Utah 84041

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



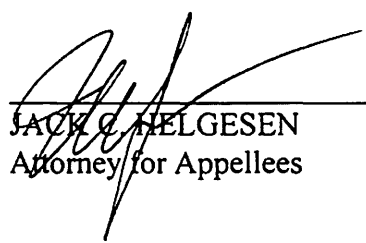
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JACK C. HELGESEN
Attorney for Appellees

Dated: February 26, 2018

Jack C. Helgesen #1451
HELGESEN, HOUTZ & JONES, P.C.
1513 N. Hill Field Road, Suite 3
Layton, Utah 84041
Telephone: (801) 544-5306
Facsimile: (801) 682-8328
jack@utahattorneys.com

Attorneys for Appellees

IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE ESTATE OF
JOYCE LUTZ MORRIS

Deceased

MARK L. MORRIS and DIANE MORRIS,

Defendants/Appellants,

vs.

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

Plaintiffs/Appellees.

**CERTIFICATE OF SERVICE FOR
BRIEF OF APPELLEES**

Utah Court of Appeals
Case No.: 201703301-CA

Second Judicial District Court
Case No.: 123900002

Jack C. Helgesen of Helgesen, Houtz & Jones, P.C. hereby certifies that on the 26th day of February, 2018, **BRIEF OF APPELLEES** was served upon the parties of record in this proceeding set forth below by the method indicated:

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DATED this 26th day of February 2018.

HELGESEN, HOUTZ & JONES, P.C.

/s/ Jack C. Helgesen
 JACK C. HELGESEN
 Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2018, I caused to be served the foregoing **CERTIFICATE OF SERVICE FOR BRIEF OF APPELLEES** upon the parties of record in this proceeding set forth below by the method indicated:

Richard H. Reeve REEVE LAW GROUP, P.C. 5160 S. 1500 W. Ogden, UT 84405 rreeve@reevelawgroup.com	<input type="checkbox"/> Electronic Filing <input checked="" type="checkbox"/> X Email <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail, 1 st Class, Postage Prepaid <input type="checkbox"/> Hand Delivery
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/s/ Samantha J. Smith
 Paralegal