

1962

# Lorenzo C. Forsey v. E. Girard Hale : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Callister & Kesler; Attorneys for Appellant;

Romney & Nelson; Attorneys for Respondent;

---

## Recommended Citation

Brief of Appellant, *Forsey v. Hale*, No. 9585 (Utah Supreme Court, 1962).

[https://digitalcommons.law.byu.edu/uofu\\_sc1/3965](https://digitalcommons.law.byu.edu/uofu_sc1/3965)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

APR 9 1962

---

---

IN THE SUPREME COURT  
of the  
STATE OF UTAH

FILED  
16 1962

LORENZO C. FORSEY,  
*Plaintiff-Respondent,*

vs.

E. GIRARD HALE, as Executor  
of the Will and Estate of Mabel  
Bean Forsey, Deceased,  
*Defendant-Appellant.*

Clerk, Supreme Court, Utah

Case No. ~~9598~~  
9585

---

APPELLANT'S BRIEF

---

Appeal from the Judgment of the  
3rd District Court For Salt Lake County  
Hon. Stewart M. Hanson, Judge

---

CALLISTER & KESLER  
619 Continental Bank Building  
Salt Lake City 1, Utah  
*Attorneys for Appellants*

ROMNEY & NELSON  
404 Kearns Building  
Salt Lake City 1, Utah  
*Attorneys for Respondent*

# TABLE OF CONTENTS

	Page
STATEMENT OF THE KIND OF CASE .....	1
DISPOSITION IN LOWER COURT .....	1
RELIEF SOUGHT ON APPEAL .....	2
STATEMENT OF FACTS .....	2
ARGUMENT	
POINT I. THE DOCTRINE OF RESTITUTION AND UNJUST ENRICHMENT CANNOT AND DOES NOT APPLY UNDER THE FACTS OF THIS CASE. ....	4
POINT II. TO HAVE A VALID CLAIM AGAINST THE ESTATE OF THE DECEASED UNDER SECTION 75-9-21 UTAH CODE ANNOTATED 1953, RESPONDENT MUST HAVE PAID OUT OF HIS OWN FUNDS THE EXPENSES OF THE LAST ILLNESS OF DECEASED. ....	5
POINT III. TO HAVE A VALID CLAIM AGAINST THE ESTATE OF THE DECEASED FOR THE EXPENSES OF THE LAST ILLNESS, THERE MUST ALSO BE A DEBT OF A PECUNIARY NATURE WHICH COULD HAVE BEEN EN- FORCED AGAINST DECEASED IN HER LIFE- TIME AND REDUCED TO A SIMPLE MONEY JUDGMENT. ....	8
CONCLUSION .....	12

## CASES CITED

Abramowitz' Estate, In Re, 9 N.Y. Supp. 2d 846 (1939)	8
Andrade v. Azevedo, 50 P. 2d 80 (C.A. Calif. 1935) .....	8
Columbia Trust Co. v. Anglum, 63 Utah 353, 225 P. 1089, 1093 (1924) .....	6
Gilbreath v. Leri, 119 S. 2d 210, (Ala. 1955); Re hearing denied March 24, 1960 .....	10
Iverson's Appeal, In Re, 81 N.W. 2d 701, (Minn. 1957)	10
Randle's Estate, In Re, 20 N.W. 2d 464, 465 (Iowa 1945) .....	7

## TABLE OF CONTENTS—Continued

	Page
Reedy v. Alexander, 30 S. 2d 599, 601 (Miss. 1947) ....	10
Smith v. Eichner, 215 P. 27 (Wash. 1923) .....	8
Straube v. Bowling Green Gas Co., 18 A.L.R. 1335, 227 S.W. 2d 666, (Mo. 1950) .....	4
Tinkham v. Tinkham, 45 N.E. 2d 357, 360 (Ind. 1942)	10

### TEXTS CITED

American Jurisprudence, Volume 21, Page 579 .....	9
American Jurisprudence, Volume 46, Page 99 .....	4
Bancroft's Probate Practice, 2nd Edition, Volume 3, Pages 532, 533 .....	9
Corpus Juris Secundum, Volume 34, Page 95 .....	9

### STATUTES CITED

Utah Code Annotated 1953, Section 75-9-21.....	2, 4, 5, 6, 12
--	----------------

IN THE SUPREME COURT  
of the  
STATE OF UTAH

---

LORENZO C. FORSEY,  
*Plaintiff-Respondent,*

vs.

E. GIRARD HALE, as Executor  
of the Will and Estate of Mabel  
Bean Forsey, Deceased,  
*Defendant-Appellant.*

} Case No. 9598

---

APPELLANT'S BRIEF

---

STATEMENT OF THE KIND OF CASE

Respondent brought an action against the appellant, E. Girard Hale, as Executor of the Will and Estate of Mabel Bean Forsey, deceased, for recovery of sums paid for the last illness and funeral expenses of deceased.

DISPOSITION IN LOWER COURT

Respondent was awarded a summary judgment by the Honorable Stewart M. Hanson of the Third District Court, and it is from this summary judgment that appellant appeals.

## RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the summary judgment as a matter of law.

## STATEMENT OF FACTS

The deceased was named beneficiary under a group insurance health and accident plan of the Lincoln National Life Insurance Company (Exhibit P-1), which was issued to the Utah Furniture Association and showed the name of Lorenzo C. Forsey as the insured.

Pursuant to the terms of said policy, Lincoln National Life Insurance Company paid the total sum of \$1205.41 direct to the hospital and doctors for the last illness of the deceased.

The respondent, Lorenzo C. Forsey, after the death of the deceased, made a claim on the estate of the deceased, pursuant to Section 75-9-21 Utah Code Annotated 1953, for moneys paid for the last illness and funeral expenses of deceased. The appellant, E. Girard Hale, as executor of the estate of deceased, refused said claim, and an action was commenced in the Third District Court for the recovery of said sums (R. 1, 2).

At the time of the pretrial conference (R. 9, 10), it was stipulated that the only amount in con-

troverſy was the ſum of \$1205.41, which was paid by the inſurance company for the laſt illneſs of the deceased. The parties then each moved for ſummary judgment based on the foregoing facts and contentions of the parties: It being reſpondent's contention that if reſpondent is not entitled to recover the ſum as paid by the inſurance carrier for the laſt illneſs, then the eſtate of decedent will be unjuſtly enriched. It being appellant's contention that it was not a payment of reſpondent's moneys that were paid for ſaid amounts referred to above, but was a payment by the inſurance company and, therefore, reſpondent was not entitled to recover, and further, that this is not a claim for reimbursement the court ſhould make, becauſe the reſpondent has not paid out any moneys for the laſt illneſs of the deceased.

The court then inſtructed the reſpective parties to prepare briefs (R. 15-24), and upon reading the briefs the court granted the plaintiff's motion for ſummary judgment (R. 25, 26), ſaid judgment being ſubſequentially amended (R. 27, 28) in the amount of \$2573.17, together with intereſt.

Subſequent to ſaid amended ſummary judgment, appellant and reſpondent entered into a ſtipulation for part payment of the judgment in the amount of \$1460.00, ſaid ſums not being conteſted by the parties in this appeal. Therefore, the only

amount in controversy being that paid by the insurance company for the last illness of the deceased.

## ARGUMENT

### POINT 1.

THE DOCTRINE OF RESTITUTION AND UNJUST ENRICHMENT CANNOT AND DOES NOT APPLY UNDER THE FACTS OF THIS CASE.

All that the respondent was, was an insured and beneficiary under the terms of a group insurance policy, the same as his wife, Mabel Bean Forsey. The only basis upon which the respondent could recover would be under and by virtue of the statute under Section 75-9-21 Utah Code Annotated 1953. In other words, his claim must be one entitled under and by virtue of said section. We feel that the doctrine of restitution and unjust enrichment cannot and, of course, does not apply.

In the case of *Straube v. Bowling Green Gas Co.*, (Mo. 1950) 18 A.L.R. 1335, 227 S.W. 2d 666, the court in that case clearly sets forth the general rule, and that is that the theory of unjust enrichment necessarily depends upon whether, by the receipt of the funds in controversy, the defendant in this case was enriched at the loss and expense of the plaintiff. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.



Under no condition could it be said under the facts in this case that there is any evidence that the respondent suffered a loss or expense in which the deceased was enriched. Unjust enrichment arises not only where an expenditure by one person adds to the property of another, but also where the expenditure saves the other from expense or loss. There is no evidence whatsoever here that there was loss or expense in any particular. Particularly, was there no loss or expense aggregating the amount of the alleged claim due the respondent in view of the fact that the expense of the last illness was paid to the doctors and hospital by the group insurance carrier. 46 Am. Jur. 99.

## POINT II.

TO HAVE A VALID CLAIM AGAINST THE ESTATE OF THE DECEASED UNDER SECTION 75-9-21 UTAH CODE ANNOTATED 1953, RESPONDENT MUST HAVE PAID OUT OF HIS OWN FUNDS THE EXPENSES OF THE LAST ILLNESS OF DECEASED.

Section 75-9-21 Utah Code Annotated 1953 governs the payment of the expenses of the last illness or sickness, and provides as follows:

The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and expenses of the last sickness \* \* \*.

It is the contention of the appellant that it was a group insurance plan, and not the respondent

Forsey, who paid a portion of the last illness expenses of the deceased and, therefore, under the above quoted section, respondent had no claim on the estate for reimbursement because respondent had not paid out any moneys for the last illness of the deceased. The group health and accident insurance plan in question was issued by the Lincoln National Life Insurance Company to the Utah Furniture Association, having as its coverage Utah Furniture Association members and their employees and dependents. The particular insurance policy in question (Exhibit P-1) was issued by the insurance company to the Utah Furniture Association, and deceased was designated as beneficiary and respondent as the insured. There is no evidence, however, as to whether respondent or a Furniture Company paid the premiums on this policy, although the letter of explanation on the inside cover of said policy, in referring to the insured, states that:

“\* \* \* We urge you to show appreciation of the fact that your employer is paying a substantial portion of your premium.”

The Utah case of *Columbia Trust Co. v. Anglum*, 63 Utah 353, 225 P. 1089, 1093 (1924), lays down the general rule as to what claims are allowed under Section 75-9-21, Utah Code Annotated 1953, for the payment of the last illness expenses of deceased by a third person. In this case the widow of

the deceased paid for the expenses of the last sickness of the deceased, and the court in allowing her to be reimbursed from the estate in payment for such moneys expended, stated:

“Hospital dues and medical attendance are charges proper to be presented to and allowed against an estate, and if paid by another are proper charges to be allowed such person for the money so *advanced* if reasonable in amount.”

Thus the court held that payment by another other than the deceased for last illness expenses is entitled to reimbursement for moneys so advanced. In the case at bar, the insurance carrier, and not Forsey, paid for the last illness expenses of the deceased.

The Supreme Court of the State of Iowa, *In Re Randle's Estate*, 20 N.W. 2d 464, 465 (1945), held that where the widow of the deceased made no advancements from her own funds to pay the funeral expenses of the deceased, but made payment from funds turned over to her by the United Mine Workers for the purpose of paying deceased's funeral bill, that she couldn't get reimbursement from the estate for moneys which did not come out of her own personal funds. In fact, the court held that since the widow received \$174.00 from the United Mine Workers funeral fund and paid only \$122.75 of this sum for funeral expenses, leaving \$46.25

for the estate to pay, that the widow was not entitled to any refund for the \$122.75, and also that the widow was to be charged the amount of \$46.25 which the estate had paid for funeral expenses. In other words, the widow would be unjustly enriched if she could use the \$174.00 from the United Mine Workers fund to pay for funeral expenses, and then be reimbursed that amount by the estate. It would likewise be unjust enrichment for respondent to claim the full amount of moneys paid by the insurance company for the last illness of the deceased.

There are many other cases holding that to have a claim against an estate of a decedent, that sums paid for funeral expenses or last illnesses must be advanced by the person making the claim. The case of *Smith vs. Eichner*, 215 Wash. P. 27 (1923), held that a husband of a deceased wife was entitled to reimbursement because he had actually paid out of his own resources expenses of the last illness. Other cases are *In Re Abramowitz' Estate*, 9 N.Y. Supp. 2d 846 (1939), and *Andrade v. Azevedo*, 50 P. 2d 80 (C. A. Calif. 1935).

### POINT III.

TO HAVE A VALID CLAIM AGAINST THE ESTATE OF THE DECEASED FOR THE EXPENSES OF THE LAST ILLNESS, THERE MUST ALSO BE A DEBT OF A PECUNIARY NATURE WHICH COULD HAVE BEEN ENFORCED AGAINST DECEASED IN

## HER LIFETIME AND REDUCED TO A SIMPLE MONEY JUDGMENT.

The rule is well established in 34 C.J.S. 95 that the word "claims":

"\* \* \* has reference only to such debts or demands against decedent as might have been enforced against him in his lifetime by personal action for the recovery of money, and on which only a money judgment could have been rendered".

This rule is also stated in 21 Am. Jur. 579.

It should be noted, however, that funeral expenses are an exception to the above quoted rule, because as stated in Bancroft's Probate Practice, 2nd Edition, Volume 3, pages 532, 533:

"Funeral expenses are not properly a 'claim' against the estate in the sense of being an obligation contracted or incurred by the decedent. Neither are they expenses of administration. They are rather a charge against the estate which the law authorizes because of the dictates of society, \* \* \*"

Thus, it is important to draw a distinction between the expenses of the last illness and the expenses of funeral expenses, because in the case of the expenses of the last illness there is a debt contracted or incurred by deceased during his or her lifetime, while in the case of funeral expenses there is hardly ever a debt contracted for or authorized by decedent during his lifetime.

One of the leading cases in defining what constitutes a claim against the estate of a deceased is *Tinkham v. Tinkham*, 45 Ind. N. E. 2d 357, 360 (1942), which is very explicit in defining what constitutes a claim against an estate. The court in substance stated that a claim within a statute relating to an action against an executor or administrator is a debt or demand of a pecuniary nature which could be enforced against decedent in his lifetime and could be reduced to a simple money judgment. This same doctrine is also affirmed *In Re Iverson's Appeal*, 81 Minn. N. W. 2d 701 (1957), and *Reedy v. Alexander*, 30 Miss. S. 2d 599, 601 (1947). The case of *Gilbreath v. Line*, 119 S. 2d 210 (Ala. 1955), held that there must be a relationship of debtor and creditor between deceased and the claimant to have a valid claim against the deceased's debt.

It is obvious that when decedent died there was no debt owing to respondent for her last illness, as the insurance company had already paid the debt and, therefore, respondent could not have enforced the debt against decedent in her lifetime and reduced the debt to a simple money judgment. Decedent satisfied the expenses of her last illness under question in this case by virtue of the fact that she was a beneficiary of a group health and accident insurance plan, and at the time of her death she did



not owe respondent or anyone else for the expenses of her last illness. To hold that a member or employee of a furniture association, who is listed on a group health and accident insurance policy naming another other than himself as beneficiary, can then charge the estate of the deceased beneficiary with a claim for the expense of the last illness paid by the policy, when he has no claim against the deceased which he could have enforced during her life, is untenable.

## CONCLUSION

We feel, without any question, that this claim does not come within the provisions of the Utah Code Annotated, *supra*, in any particular.

It cannot come within the doctrine of restitution and unjust enrichment; nor is it a claim that could have been enforced at the time of the death of the decedent. Simply, all this amounts to is the fact that a group insurance carrier paid to the hospital and doctors under the terms of its policy to the beneficiary named therein for performing services during the last illness of the deceased.

If the view of the trial court is correct, then the surviving spouses of every group insurance policy, where the employer pays the substantial portion of the premium, would be entitled to be unjustly enriched from the proceeds of a policy paid by an insurance carrier. We think this is, without any question, improper and cannot be supported by the statutes or any law.

Respectfully submitted,

CALLISTER & KESLER  
619 Continental Bank Building  
Salt Lake City 1, Utah

By.....  
*Attorneys for Appellants*