1983

# In the Matter of the Estate of Frank Chasel, Deceased : Respondent's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

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In the matter of the Estate of )
)
FRANK CHASEL, Deceased. )
)
) No. 19265

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# RESPONDENTS' BRIEF

**********

Appeal from the Judgment of the Seventh
Judicial District Court for Duchesne County
Honorable Boyd Bunnell

**********

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RESPONDENTS' BRIEF

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## NATURE OF THE CASE

This is an action by Appellant to have this Court set aside his previously approved Estate Closing Order; to set aside a Settlement Agreement entered between the parties which was approved as part of the Estate Closing Order; and to admit a newly discovered Will to Probate.

## DISPOSITION IN LOWER COURT

The Appellant's untimely Motion to Set Aside his own formal Estate Closing Order; to Set Aside the Settlement Agreement; and to Admit a Newly Discovered Will to Probate were all denied. The Court ruled that the Appellant's informal proceeding had been formally closed upon the petition of the Appellant, and accordingly it became final when entered and no new Will could be admitted to Probate (quoting Utah Code Annotated, 75-3-412(3)A). The Court further ruled that the Appellant had failed to sustain his burden of proof to support his Motion to Set Aside the Settlement Agreement. From this decision deny-

ing all aspects of his Motion, Appellant has filed this appeal.

## RELIEF SOUGHT ON APPEAL

Respondents seek an affirmation of the District Court's Decision and Order that the estate was formally closed, that the Motion to Admit a Newly Discovered Will was untimely and that the Appellant has presented no facts nor legal basis to justify setting aside his own Estate Closing Order which incorporated the Settlement Agreement between the parties.

## STATEMENT OF FACTS

The Decedent, Frank Chasel, died June 24, 1980 in Duchesne County as a single man having divorced his former wife, Arlene I. Chasel, prior to 1958. Frank Chasel had a son by this marriage but this son lived with his mother and stepfather in Colorado and Nebraska (see transcript pages 18 and 19). The Decedent, Frank Chasel, stated to the Respondents during the last several years of his life that he believed that his son, William Frank Chasel, Appellant, had been adopted by one of his stepfathers. Prior to his death, the Decedent gave to John Chasel, one of the Respondents herein, a copy of a Will which appointed John Chasel as Executor and, in effect, disinherited the Appellant. That notwithstanding the Appellant filed an informal intestate Probate action for the Estate of his

deceased father in Duchesne County (Duchesne Probate No. 4092). Respondents filed for a formal testate Probate on the basis of the above described Will.

At the time of filing the Probate, the Appellant was represented by Attorney, John Beaslin, and the Respondents were represented by their present counsel. A settlement meeting was held in John Beaslin's office on or about February 6, 1981 and the parties all being present reached a compromised settlement entirely dividing the Estate of the Decedent between the parties. Said Agreement was reduced to writing and incorporated in the Appellant's Petition to Close the Estate. Based upon the settlement the Respondents agreed to allow the Appellant to continue with his Probate proceeding and Appellant agreed to immediately undergo financial arrangements to raise the cash necessary to pay the agreed settlement. Appellant was to apply for a loan and to pay the amounts required by the Agreement on or before April 6, 1981. However if the amount was not paid, interest was to be added as stated in the Agreement.

Although Appellant's initial Probate proceeding was informal, Petitioner through his attorney, John Beaslin, on the 30th of July, 1981, filed a Petition for Approval of the Final Settlement and Distribution, (transcript page 19) for determination of heirship, and as part of said Petition, for approval of the settlement between the parties. The Court set the matter for hearing on the 27th of July, 1981, the Appellant waived notice (tran-

script page 30) and the Court subsequent to said hearing entered an Order determining heirship (transcript page 38; and a formal Estate Closing Order (transcript page 39 and 40).

As part of the final Order, the Appellant was ordered to distribute the assets of the Estate in accordance with the Settlement Agreement and the Schedule of Distribution. The Appellant refused to convey any property or assets to the Respondents. Finally, almost a full year after the Estate Closing Order had been entered, Appellant with new counsel on July 22, 1982 filed a Motion to: 1) Set Aside the Informal Probate, 2) Set Aside the Agreement, and 3) Admit a Newly Discovered Will to Probate. Respondents here opposed the Motion and filed a Memorandum of Law in Opposition thereto.

The District Court with Judge Bunnell presiding denied all aspects of Appellant's Motion and his ruling was entered on the 9th of May, 1983. Pursuant to said ruling, Petitioners prepared an Order which was signed by Judge Bunnell on the July 18, 1983.

## ARGUMENT

### 1. THE PROBATE PROCEEDING COMMENCED BY THE APPELLANT WAS FORMALLY CLOSED.

Respondents can generally concede Point I of Appellant's Brief, i.e. that an Order of the Court Approving a Family Settlement does not in and of itself conver

an informal probate proceeding to a formal proceedings. However, that concession is not controlling here. Appellant ignores other aspects included in the Appellant's Petition for approval of final settlement and distribution and determination of heirship which are totally inconsistent with Appellant's position that this Estate was informally closed.

The Utah Probate Code, Utah Code Annotated 75-3 et seq., provides for two alternate methods for closing an estate:

A. Informally by sworn affidavit of the Personal Representative, and

B. By formal proceedings which terminate the administration.

The informal closing of estates by sworn affidavits is governed by Utah Code Annotated 75-3-1003. That section allows the Personal Representative to file a verified statement stating that he has published Notice to Creditors, that he has properly administered the Estate by making payments or settlements or other distribution of all claims, and by sending a copy of that statement to all distributees of the Estate. If no proceedings involving the Personal Representative are pending in the Court one year after the Closing Statement is filed, the appointment of the Personal Representative terminates. In short, there is no Estate Closing Order and the Personal Representative remains liable for one year after filing a verified state-

ment. The informal closing provides for no Estate Closing Order nor any determination of heirship.

Utah Code Annotated 75-3-1001 provides an alternate method for formally closing estates. Under that section, the Personal Representative may petition the Court for an Order of Complete Settlement of the Estate to determine testacy if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any Will or determine heirs, and to adjudicate the final settlement and distribution of the Estate. Under that section, notice to all parties is required and hearing must be held on the matter. After the hearing, the Court may enter an Order approving the settlement, directing or approving distribution of estate and discharging the Personal Representative from claim or demand from any interested person. Thus, in the formal closing, notice is required unless waived, a hearing is required and an Estate Closing Order is entered. The Court determines who is entitled to the distribution of the estate, determines testacy and approves the final accounting. Heirship may also be determined and the Personal Representative is formally discharged.

Appellant clearly mistakenly interprets the Petition for the Approval of the Final Settlement and Distribution (transcript page 19 and 20) with its attached schedule of distribution and other documents filed by the Appellant on the 30th of July, 1981. That document obv-

ously asks for more than approval of a Settlement Agreement entered into between the parties. If an approval of the Settlement Agreement is all that was intended and if the estate was still intended to be closed informally, there could be no Estate Closing Order, could be no determination of heirship, and the Personal Representative could not be discharged. A careful reading of the Estate Closing Order reveals that all of the aspects required and available in formal estate closings as set forth in Utah Code Annotated 75-3-1001 were incorporated in the Estate Closing Order. The first paragraph of the Order states:

> "All required notices have been given or waived, the Estate has been administered according to the laws of the State and the Orders of this Court and should be closed."

Furthermore, the Order approves the final accounting of the Personal Representative, authorizes the Personal Representative to deliver and distribute title and possession of the assets in accordance with the schedule and further provides:

> "the Personal Representative shall be fully and finally released and discharged from this trust and from any and all liability arising in connection with the performance of his duties as Personal Representative and the administration of this estate shall be closed" (transcript page 39).

The Order further determines intestacy and determines heirship.

Appellant's mistakenly argue that no notices were

given and at the same time admit that Appellant specifically waived notice of this hearing (transcript page 30). Utah Code Annotated 75-3-1001 provides a remedy for those heirs or devisees who were omitted or not given notice of a Petition for Formal Closing of an Estate. Said section provides:

> "The previous Order concerning testacy is conclusive as to those given notice of the earlier proceedings."

That section allows the Court to determine testacy as it affects only omitted persons and confirm or alter the provisions of the Order as it effects all interested parties as appropriate in light of the new proof. It further limits any challenge to the previous Order to those who were omitted or unnotified. The Appellant clearly does not fall in that category by reason of his obvious knowledge of the Petition, by reason of his signature affixed thereon (transcript page 21), by reason of his waiver of notice (transcript page 30) and has no standing under 75-3-1001(2) to challenge the Estate Closing Order.

The Court's Order finding that the above Estate was formally closed on July 31, 1981 by the Estate Closing Order is clearly correct and supported by both the facts and the law and Appellant has not sustained his burden which would allow this Court to reverse that Order.

II. THE COURT SHOULD UPHOLD THE FAMILY SETTLEMENT AGREEMENT WHICH WAS APPROVED AND BECAME PART OF THE FINAL ESTATE CLOSING ORDER

Settlement agreements compromising controversies in estates are provided for by the Uniform Probate Code, Section 75-3-1101:

> "A compromise of any controversy as to admission to probate of any instrument offered for effect of any probated will, the rights or interests in the estate of the decedent, any successor, or the administration of the estate, if appoved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inallenable interest. A compromised does not impair the rights of creditors or of taxing authorities who are not parties to it."

The agreement between the parties was submitted to the Court for final approval pursuant to section 75-3-1102 and was approved by the Court as part of the final Estate Closing Order. It thus becomes binding upon all the parties and is res adjudicata having been entered as part of a final order July 31, 1981.

It is unclear as to what legal grounds Appellant makes for setting aside the compromise settlement agreement. The only evidence presented on that issue was included in the affidavit of William Frank Chasel filed with his Motion (transcript pages 41 and 42). The facts stated therein are sketchy, and they do not support any conclusion of misconduct. Appellant states no case nor statutory

authority for his Motion. He obviously failed to file a timely appeal to the Estate Closing Order. His only arguable statutory remedy appears to be under Rule 60b. The affidavit and brief of the Appellant appear to urge a mistake of fact, inadvertence, surprise, excusable negligent, newly discovered evidence, and perhaps even fraud, misrepresentation or other misconduct on the part of the Respondents. All of the alleged but unproved allegations raised by Appellant's Affidavit and Brief are covered by Rule 60b which provides for relief from final judgment or order for the following reasons:

> "1. Mistake, inadvertence, surprise or excuseable neglect;
> 2. Newly discovered evidence which by due deligence could not have been discovered in time to move for a new trial under Rule 59(b);
> 3. Fraud (whether heretofore dominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party."

Respondents only conclusion as to why Appellant did not quote Rule 60b is the obvious time limitation imposed therein:

> "the Motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4) not more than three months after the judgment, order, or proceeding was entered or taken."

Appellant's Motion to Set Aside this judgment incorporating the agreement was not made until almost one year after the Order was entered and Appellant is clearly not entitled relief under Rule 60b. Any claim for fraud, mis-

representation, mistake, excuseable neglect, etc. had long been barred prior to the filing of Appellant's Motion.

III. THE COURT PROPERLY REFUSED TO ALLOW THE PROBATE OF A NEWLY DISCOVERED WILL.

Although the Appellant in his Brief under the Section entitled "Relief Sought Under Appeal", is urging this Court to admit a newly discovered Will to Probate, the Appellant's Brief apparently abandons this point as no authority is argued in support thereof. In light of the references and requests of the Appellant to admit the newly discovered Will to Probate, Respondents provide the following authority with respect to that request.

The Uniform Probate Code makes provision for admission for a newly discovered Will after initiation of Probate proceedings, Section 75-3-412(1) provides:

> "(1) Subject to appeal and subject to vacation as provided in this section and in section 75-3-413, a formal testacy order under this part, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs except that: (a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice of it, except by publication.
> (b) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that

one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.
(c) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of later-offered will or the order redetermining heirs...

(3) A petition for vacation under either subsections (1) (a) or (b) must be filed prior to the earlier of the following time limits:
(a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.
(b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 75-3-107 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.
(c) Twelve months after the entry of the order sought to be vacated."

In analyzing the time periods provided in section 3, it is important to note that the earlier time period, that is the first time period to lapse, controls. Under 3(a), since a Personal Representative was appointed in this Estate, the cut-off point for admission of a new Will to Probate is either (a) the time of entry of an Order approving the final distribution of the estate, or, (b) if the estate is closed informally by statement, six months after the filing of the closing statement. It is clear that the time periods provided in subparagraph 3(a) will control as they are the earlier of the alternate time periods provided in paragraph (b) and (c). Under paragraph (b) a time would be three years from the date of

death which was June 24, 1980 and under paragraph (c) would be twelve months after the entry of the Order of July 31, 1981.

It is important to note that whether the Court accepts the Appellant's position that the Estate was informally closed in July, 1981 or whether the Court accepts the Respondents' version that the Estate was formally closed, the time periods provided for admission of a new Will to Probate expired prior to the filing of Appellant's Motion. Assuming for the purposes of argument that the document filed by the Appellant on the 30th of July, 1981 was a closing statement rather than a Petition for Formal Closing, the Appellant would have only six months from said date to file a Petition to Admit a New Will to Probate. If, however, the lower Court's position is affirmed which adopted Respondents' view that the Estate was formally closed, then the new Will would have to be admitted prior to execution of the Estate Closing Order which was July 31, 1981.

In light of the foregoing, it is perhaps not surprising that Appellant has apparently abandoned his request that the newly discovered Will be admitted to Probate, at it is clearly untimely.

IV. APPELLANT HAS FAILED TO PRODUCE SUFFICIENT EVIDENCE THAT THE FAMILY SETTLEMENT WAS PROCURED BY DURESS.

The chief thrust of the Appellant's Brief is that

the "young and impressionable" Appellant was pressured into signing a settlement agreement. Appellant concedes, however, "that it is not duress to threaten to do that which one has a legal right to do, i.e., threaten to litigate a claim asserted in good faith" (Appellant's Brief page 8). The only evidence offered by the Appellant of said duress was in his Affidavit dated July 22, 1982. The only duress claimed in said Affidavit is set forth in paragraphs 3 or 4 which relate to the Respondents' filing of a separate Probate action based upon a Will. The Appellant refers to these as threats of litigation but, in fact, they were more than threats. A litigation had already been commenced by Respondents for Probate of the aforementioned Will. Appellant further argues in his Brief that his own attorney told him that "he had to settle and that the Appellant was lead to believe that he had no other option that he would lose everything if he did not sign the settlement" (Appellant's Brief page 9). It is not clear from Appellant's Brief whether that belief came from Respondents or from Appellant's own counsel.

In evaluating Appellant's "pure heart and empty head" argument and in his apparent appeal to the equitable powers of the Court to relieve him from this Settlement Agreement, Respondents urge that the Court review all of the equities of the case. "He who seeks equity must do equity." The parties entered into a good faith arms-length transaction at a time when good faith and legal

claims were asserted by all parties. After the settlement had been reached, Respondents allowed the Appellant to have full control of all of the assets of the Estate which in accordance with the accounting of the Appellant total $441,691.98 (transcript page 29 - gross estate). Respondents in their agreement provided that Appellant would have 60 days interest free to pay amounts due which was believed by all parties to be a time period sufficiently long to allow the Appellant to obtain the funds to pay off the Settlement Agreement. This Settlement Agreement was made on February 6, 1981. Appellant had five and one-half months to consider and act on the agreement prior to petitioning the Court for approval of the same on July 30, 1981. At no time during the five and one-half month period, did Appellant assert any of the fraud or duress claims. These claims were first made almost a year and one-half after the agreement was made. In the meantime, the Appellant, knowing that Respondents were relying upon the settlement, has taken possession of the property without contest, has used the assets awarded to him as he desired, and has had all of the benefits of the agreement.

In further evaluating Appellant's conduct it is important to note that even though the Estate Closing Order entered in July 31, 1981 required him to deed certain property to the Respondents (transcript page 37) no conveyance has been made to Respondents, even though, Appellant has deeded all of the other properties to him

self provided in the schedule of distribution. It is apparent that Appellant has never intended to comply with the Court's Estate Closing Order and that the Motion filed almost a year after the Estate Closing Order is simply a bad faith attempt on the part of the Appellant to avoid a Settlement Agreement which he has had the benefit of from the date of its inception. The Appellant has provided no evidence of fraud or misrepresentation on the part of the Respondents justifying the Court's intervention particularly at this late date. On the contrary the Appellant by his own willful disobedience of the Order has evidenced his own bad faith and contempt.

## IN SUMMARY

Appellant contends that the only rational conclusion from the documents presented by the Appellant at the time of closing the Estate is that the Appellant intended the Estate to be closed formally. However, a classification of the closing as formal or informal is not necessarily controlling upon the other issues presented by the Appellant, since a Will offered more than eleven months after a formal or informal closing is untimely.

The parties hereto entered into a compromised agreement which was approved by the Court in accordance with the Utah Uniform Probate Code. This agreement became part of the final Estate Closing Order. The Estate Closing Order was never appealled from nor was any timely Motion

made for relief from said Order under Rule 60b. The issues of fraud, mistake, etc. raised by the Appellant are barred by res judicata and said Order has become final. It is not now challengeable by either party.

Because the newly discovered Will cannot now be probated as a result of its untimely discovery, it cannot serve as a mistake of fact justifying the Appellant in rescinding his prior Settlement Agreement.

The Respondents respectfully request that the Court affirm the decision of the lower Court.

DATED this _____ day of November, 1983.

RAYMOND A. HINTZE
Attorney for Respondents

I hereby certify that I mailed a true and correct copy of the foregoing to GEORGE E. MANGAN, Attorney for Appellant, at 47 North Second East, Roosevelt, Utah 84066, postage prepaid on this _____ day of November, 1983.

LINDA ANNE TABOR, Secretary