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Cecil J. Hiatt v. Jen L. Hiatt : Brief of Respondent

Utah Supreme Court

For Petitioner and Respondent; Ray H. Ivie;
For Objectors and Appellants; George M. McMillan and Arthur A. Allen, Jr.;

In the Supreme Court of the State of Utah

In the Matter of the Estate of
ALMA LEON HIATT, Deceased.
CECIL J. HIATT,
Petitioner and Respondent,

vs.

JEX L. HIATT, Joint Administrator, et al.,
Objectors and Appellants.

NO. 9963

RESPONDENT'S BRIEF

Appearances:

For Petitioner and Respondent:
Ray H. Ivie
227 North University Avenue
Provo, Utah

For Objectors and Appellants:

George M. McMillan and Arthur A. Allen, Jr.
1020 Kearns Building
Salt Lake City, Utah

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AUTHORITIES

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STATEMENT OF THE CASE

The surviving widow of Alma Leon Hiatt, petitioned the District Court of Utah County for a family allowance from the Estate of Alma Leon Hiatt, deceased, and after notice was given the matter was set for hearing, there being no written objection filed to the Petition for Family Allowance; therefore, petitioner and respondent herein, appeared and gave testimony in support of her petition for a family allowance at which time a copy of a ante-nuptial

agreement was offered in evidence, the same showing on its face that no provision had been made for the surviving wife.

DISPOSITION OF THE LOWER COURT

The trial Judge awarded the widow the sum of $250.00 per month as a widow's allowance after taking her testimony as to the widow's needs and her own financial condition. (a court reporter did not take the proceedings)

The Court held that the execution of the ante-nuptial agreement did not constitute a waiver of a family allowance.

STATEMENT OF FACTS

The statement of facts set forth by the appellants should also state the following particulars:

Judge Maurice Harding did in fact take testimony as to the needs of the widow and as to the reasonableness of the amount (R. 69-71). Appellants at no time, prior to the order, filed any written objection to the petition and did not object to the hearing on the petition in the absence of a Court Reporter.

No evidence whatsoever was introduced by appellants to show any disclosure by the deceased husband, Alma Leon Hiatt, as to his assets at the time the ante-nuptial agreement was signed.

ARGUMENT

POINT I

THE COURT DID NOT ERR IN RULING THAT THE EXECUTION OF THE ANTE-NUPTIAL AGREEMENT DID NOT BAR THE WIDOW FROM CLAIMING

A FAMILY ALLOWANCE PAYABLE OUT OF ASSETS OF THE ESTATE.

The validity of an ante-nuptial agreement may be affected by:

(a) A reasonable provision for the wife;

(b) In the absence of such a provision, a full and fair disclosure to the wife of the husband's worth.

If the provision for the wife is disproportionately small, or nothing at all, the burden will be on those asserting the validity of the agreement to show (a) that the husband made full disclosure to the intended wife prior to execution of the agreement, or (b) that she had knowledge without disclosure. (Mathis vs. Crane 360 Mo 631, 230 SW2d 707, 27 ALR2d 873; Separation Agreements and Ante-nuptial Contracts by Alexander Lindsey, pages 379-386, and 394-395 CJS Volume 41, Section 97).

In the instant case the record is silent as to any disclosure to the wife or any knowledge on her behalf as to the husband's worth, even though the agreement provided nothing whatsoever for her. The pleadings show she claimed that there had been no disclosure as to her husband's worth, and overreaching.

Appellants cite several cases, from California and other states, contending that by signing the Ante-nuptial Agreement petitioner waived her right to a family allowance.

The California Court, in the Matter of the Estate of Leo Brisacher, deceased, (1959) 342 P2d 384, summarizes California Law on the subject as follows:

"Family allowances are strongly favored in the law (In re Estate of Jacobs, 61 Cal. App. 2d 152, 155, 142, P.

2d 454) and it is also well established that an applicant may have waived her right to an allowance by an agreement to the effect (In re Estate of Brooks, 28 Cal. 2d 748, 750, 171, P. 2d 724). In order to bar a family allowance the intention to waive the right must be clear and explicit, and any uncertainty in the language of the agreement will be resolved in favor of the right. In re Estate of Bidigare, 215 Cal. 28, 30, 8 P2d 122."

There is also a split in the authorities and one line of authorities hold any provision in an ante-nuptial agreement purporting to waive the statutory right of a widow's allowance is against public policy and void (In Rossiter's Estate 129 P2d 856 (1942).

Appellants herein have chosen to present the matter without a record of the proceedings although the Order shows testimony was taken. It should be presumed that the Order of the court was supported by evidence.

UCRP Section 75(m) provides as follows:

"In the event no stenographic report of the evidence or proceedings at a hearing or trial was made, or is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection, for use instead of a stenographic transcript. This statement shall be served on the respondent who may serve objections or propose amendments thereto within 10 days after service upon him. Thereupon the statement, with the objections or proposed amendments, shall be submitted to the District Court for settlement and approval and as settled and approved shall be included by the clerk of the court in the record on appeal."

CONCLUSION

Legal theory will support the Order of the Court and in the absence of a record of the testimony by stenographic report, or as provided in URCP Sec. 75 M, it should be presumed the Order of the Court was supported by the evidence.

Respectfully submitted,

RAY H. IVIE
Attorney for Appellant
227 North University Avenue
Provo, Utah