

1964

# Archie M. Haywood and George Haywood v. Darlene Gill : Brief of Appellant

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

ARCHIE M. HAYWOOD and  
GEORGE HAYWOOD, Adminis-  
trators of the Estate of Mark Haywood,  
Deceased,

*Plaintiff-Appellant,*

vs.

DARLENE GILL, Administratrix of  
the Estate of Violet Gertrude Peasley,  
Deceased,

*Defendant-Respondent.*

Case No.  
10204

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APR 1 - 1964

Clerk, Supreme Court, Utah

## BRIEF OF APPELLANT

Appeal from the Judgment of the Third District Court for  
Salt Lake County, State of Utah  
Hon. Stewart M. Hanson, Judge

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10204

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## BRIEF OF APPELLANT

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### STATEMENT OF NATURE OF CASE

The appellants appeal from the judgment of the Honorable Stewart M. Hanson, Judge, Third Judicial District Court, dismissing plaintiff's complaint.

### DISPOSITION OF CASE BELOW

Plaintiff brought an action against defendants to have it declared that the estate of Violet Gertrude

Peasley has no interest in and to the property located at 36 North 8th West, Salt Lake City, Utah, except as an heir under the probate of the estate of Mark Haywood; that it be adjudicated that the Peasley estate has no interest in \$3,250.00 in cash held in a box by Mark Haywood at the time of his death and that the estate of Violet Gertrude Peasley has no interest in a joint bank account at Zion's First National Bank. The trial court dismissed plaintiff's complaint with prejudice for no cause of action.

## RELIEF SOUGHT ON APPEAL

The appellant submits that this court should reverse the trial court dismissal of plaintiff's cause of action, and grant relief in accordance with prayer of plaintiff and appellant's complaint.

## STATEMENT OF FACTS

Mark Haywood departed this life on August 12, 1961, he then being a resident of Salt Lake City, Utah. He left a number of heirs at law and his estate was filed for probate in the District Court of Salt Lake County, State of Utah. These plaintiffs and appellants were duly appointed joint administrators of the Mark Haywood Estate. Subsequent to the filing of the Mark Haywood Estate, one of the children of Mark Haywood, namely, Violet Gertrude Peasley, died in Salt Lake City, Utah, and probate proceedings were initiated.

ed for her estate and Darlene Gill, a daughter of Peasley and a granddaughter of Mark Haywood, was appointed administratrix of her estate.

The dispute between the parties centers around three items of property and whether or not they should be part of the estate of Mark Haywood. These items consist of a one-half interest in a home located at 36 North 8th West, Salt Lake City, Utah, in which Mark Haywood resided until his death (TR 3); a sum of money plaintiffs claim that Mark Haywood kept at his home in a metal box, and a joint bank account at Zion's First National Bank. The bank account was in the name of Mark Haywood and Violet Gertrude Peasley as joint tenants (TR 2). Mark Haywood during his lifetime signed a warranty deed to the property on 8th West and the deed was recorded and eventually placed in evidence at the trial. While the deed made no reference to the one-half interest, it is clear that one-half of the property is still in the name of Mark Haywood's deceased wife, and so is not part of this controversy. This deed was prepared by attorney Bruce Jenkins in his office, signed in his office, and at which time Violet Gertrude Peasley was present, having made the arrangements for this transaction (TR 62-65). The metal box which Mark Haywood had kept a considerable sum of money in for some time was seen by both of the plaintiffs, and within six months prior to the death of Mark Haywood they had counted it with Mark Haywood and determined it to be \$3,250.00. This money was never made part of either estate and no

evidence of it could be found at the time of the death of Mark Haywood. The bank account at Zion's First National Bank was in the name of Mark Haywood and Violet Gertrude Peasley. It is clear that Violet Gertrude Peasley had her own separate bank account and that she deposited money in her own account, but no evidence was had at the trial to indicate Violet Gertrude Peasley had contributed to the joint account with Mark Haywood (TR 88-114).

Testimony was taken as to the above items, and the court found that there was no clear and convincing evidence to support plaintiffs and their complaint was dismissed. From the dismissal, this appeal is prosecuted.

## ARGUMENT

### POINT 1.

#### THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE DEED OF MARK HAYWOOD TO VIOLET GERTRUDE PEASLEY.

It is recognized that a confidential relationship or a presumption of undue influence does not arise because of a transaction between a parent and child (See 26 CJS 777), but it is likewise a well-established rule that courts will scrutinize with care deeds procured by or to the grantor's child, especially where executed without independent advice or where the parent was mentally infirm, or the consideration inadequate. (See CJS 779).

In the case of Gilliam et al vs. Schoen, an Oregon case decided in 1945, found at 157 Pac 2nd 862, the court said:

“This court has frequently had occasion to state, and we now reiterate, that it is the duty of a donee who actively participates in matters of the sort under consideration here, to see to it that the donor, before carrying his presumably benevolent intentions into effect, receives independent advice. In re Ruperts estate, supra 152 Oregon 649, 54 Pac 2nd 274, Ramstead vs. Bridges supra Or. 152 Pac 2nd 306; 24 Am Jur—Gifts—Section 49, 9 Am Jur—Cancellation of Instruments—Section 20. The failure of Mr. Schoen to safeguard his mother’s interest by insisting upon her receiving such advice is, under all the circumstances, in itself sufficient to vitiate the transaction.”

In the case before the court, the daughter or grand daughter arranged for the appointment with counsel to prepare the deed, went with him to the attorney’s office and returned with him, all during which time he had no opportunity to obtain independent advice or consult with others. Without quoting herein, the testimony of Mr. Bruce Jenkins is submitted to show the circumstances of Mr. Mark Haywood’s visit to his office. The fact that Violet Gertrude Peasley went with Mark Haywood to the office of her attorney is an indication and proof that there was a fiduciary relationship and a confidential relationship between Mark Haywood and his daughter, Violet Gertrude Peasley.

The general principle is set out in 9 Am Jur at page 366 and as follows:

“If a person stands in a fiduciary relation to another, having rights and duties which he is bound to exercise for the benefit of that other, he will not be allowed to derive any profit or advantage from the relation between them, except upon proof of full knowledge and consent of such other. In accordance with these principles, contracts or conveyances made by aged parents in favor of their children, and by children in favor of their parents, are objects of close scrutiny. If they are not reasonable, and were not entered into with perfect good faith, and especially where the original purposes for which they have been obtained are perverted or used as a cover, they will be set aside, save as to third persons, particularly when made without the benefit of competent and independent advice.”

See also the number of cases cited at 132 Pac 2nd 768, in the matter *In Re Randall's Estate*, an Idaho case.

A Utah case somewhat in point is *Blackburn vs. Jones* (1922), found at 59 Utah 558 205 Pac 582, and in which case the syllabus states:

“Son claiming mother's land under deed from her not recorded or produced until after she had died, leaving will devising land to children in equal shares had burden of satisfactorily explaining that the conveyance was made either as a gift or for a valuable consideration.”

## POINT 2.

**THE COURT ERRED IN NOT CHARGING THE ESTATE OF VIOLET GERTRUDE PEASLEY WITH THE CASH MONIES THAT WERE IN THE POSSESSION OF MARK HAYWOOD AT THE TIME OF HIS DEATH.**

We have been unable to find any case in point in this matter but we respectfully submit that the evidence herein shows that Mark Haywood had a box he kept a large sum of money in, that he had such sum within a short period of time prior to his death, that he was aged and could not have spent the money before his death, that Violet Gertrude Peasley lived in the house with him and had access to the box following death of Mark Haywood. The money and box turned up missing at the death of Mark Haywood. We respectfully submit that her interest in the estate should be charged with the money involved.

## POINT 3

**THE TRIAL COURT ERRED IN NOT AWARDING AND ADJUDGING THAT THE JOINT BANK ACCOUNT WAS PART OF THE ESTATE OF MARK HAYWOOD.**

The bank account of concern herein is the savings account identified as account No. 253690 and bank records are submitted in evidence as Exhibit P-1. These exhibits reflect the account being opened on

April 23, 1956 and the names of Mark Haywood and Violet Haywood Peasley are on the account under a joint tenancy agreement. The account records reflect the account was untouched except for one \$50.00 withdrawal shortly after it was opened, until a withdrawal was made by Violet Haywood Peasley on July 14, 1961. This was approximately one month prior to the death of Mark Haywood. After this withdrawal, in the amount of \$2,500.00, a balance remains in the account in the sum of \$1,350.24 plus some accrued interest.

We respectfully claim that this bank account and funds withdrawn from it by Mrs. Peasley should be part of the estate of Mark Haywood. If the withdrawn funds are not available, this should be charged against Mrs. Peasley's interest in the Mark Haywood estate. There is no evidence that Violet Peasley ever contributed to the account, and the fact she was on the account with Mr. Mark Haywood places her in a fiduciary position for him. It is clear from the testimony of Mrs. Peasley's daughter and Mr. Peasley himself, that Violet Gertrude Peasley had her own separate bank accounts which she used frequently, both as to checking and savings accounts.

We now urge that the above account falls within the principle of the now famous Demiris case, and we quote:

“Looking at the matter through the eyes of equity it seems indisputable that defendant's act of grabbing the money at the earliest opportunity was for the purpose of getting it for her-

self and excluding the cotenant therefrom; and that this was a wrongful act which should not be rewarded. Under such circumstances the court should look beyond the superficiality of the form in which the money was held and determine the true facts as to its ownership." "First Security Bank of Utah, N.A., v. Iphegenea P. Demiris, 354 Pac. 2nd 97." 10 Utah 2nd 405.

The clear fact that Mrs. Peasley withdrew better than half of the money in the account within a month prior to Mark Haywood's death, and at a time when he was dying, clearly indicates an intention to exclude the co-tenant therefrom.

The deaths of both Mark Haywood and Violet Gertrude Peasley leave us without testimony from Mrs. Peasley which could be most helpful. In view of the lack of this, we submit that this matter should be decided on the legal presumptions applicable. First, there does not appear to be any question that Mrs. Peasley enjoyed a confidential relationship and also a fiduciary relationship with Mark Haywood. She signed his Social Security checks to have them cashed. She was on a joint bank account with him. She handled finances for operation of the home as to groceries, utilities and other household expenses. Under this status the burden rests on Mrs. Peasley or her estate to show the account was a gift or otherwise, and if the burden is not so met it should be presumed Mrs. Peasley exercised undue influence on Mark Haywood as to his bank account. We think the same cases apply as are quoted under Point 1 of this brief.

## CONCLUSION

An overall review of the facts in this case raises a number of legal problems and issues, but we are of the considered opinion that the primary and basic issue revolves around the relationship between Mark Haywood and Violet Gertrude Peasley. It seems clear that since 1956, Mrs. Peasley enjoyed a close and confidential relationship with Mark Haywood. It is also clear that he was an old man, with certain infirmities. In view of the lack of concrete testimony to support Mrs. Peasley's position, the presumption against her and her estate should apply. The deed should be set aside because of undue influence, the interest of Mrs. Peasley in the estate should be charged with the cash money held by Mark Haywood and never found, and the bank account should be settled in accordance with the principles of the Demiris case.

Respectfully submitted,

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