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IN THE SUPREME COURT OF THE STATE OF UTAH

ARCHIE M. HAYWOOD and GEORGE HAYWOOD, Administrators of the Estate of Mark Haywood, Deceased,
Plaintiffs-Appellants,

vs.

DARLENE GILL, Administratrix of the Estate of Violet Gertrude Peasley, Deceased,
Defendant-Respondent.

Case No. 10204

FILED
JAN 20 1965
Clerk, Supreme Court, Utah

BRIEF OF RESPONDENT

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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INDEX

	Page
STATEMENT OF FACTS	3
POINT I. THE TRIAL COURT DID NOT ERROR WHEN IT REFUSED TO SET ASIDE THE DEED OF MARK HAYWOOD TO VIOLET GERTRUDE PEASLEY.	5
POINT II. THE COURT DID NOT ERROR 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.	6
POINT III. THE TRIAL COURT DID NOT ERROR WHEN IT DID NOT AWARD AND ADJUDGE THE JOINT BANK ACCOUNT PART OF THE ESTATE OF MARK HAYWOOD.	8
CONCLUSION	10

CASES CITED

Blackburn vs. Jones, 59 Utah 558, 205 Pac. 582	6
In re Crandalls Estate, 9 Utah 2nd 161, 340 P 2nd 760	10
First Security Bank of Utah vs. Demiris, 10 Utah 2nd 405, 354 Pac. 2nd 97	8
Gilliam et al vs. Schoen (Oregon) 157 2nd 682	5

AUTHORITY

16 Am Jur, Deed, Sec. 375	6

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Case No. 10204

BRIEF OF RESPONDENT

STATEMENT OF FACTS

The facts as stated in the Appellants' brief are substantially correct, but additional facts should be reviewed to get a full and accurate picture.

Mark Haywood was 87 years of age when he departed this life on August 21, 1961. In 1955, Mr.

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Haywood was beginning to require housekeeping care as well as personal care. Violet Gertrude Peasley moved into her father's house in the fall of 1955 to take care of him until he died. In consideration for taking care of her father, she was to receive the house. On April 26, 1956 a warranty deed was executed and recorded on May 1, 1956. Mark Haywood retained a life interest in said property and conveyed the fee simple to his daughter. Violet Gertrude Peasley took care of her father up until his time of death.

The entire family of Mark Haywood knew that he kept a sizeable sum of money in a metal box in a locked dresser drawer in his bedroom. The box was said to be gray in color and contain approximately $3,400.00. There is conflict in the evidence as to the exact amount in the box and the last time a member of the family actually saw the money. On August 12, 1961, the day Mark Haywood died, the Appellants began to search the house for the metal box. Violet Gertrude Peasley spent a small portion of her time in the house after her father's death, although she was residing in the house on November 15, 1961, the day she passed away. On the day of her death the house was padlocked and the Appellants have had exclusive possession of the house and have searched all of its contents. The evidence indicates a green box in color was found by the Appellants, but no money was found.

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STATEMENT OF POINTS

POINT I

THE TRIAL COURT DID NOT ERROR WHEN IT REFUSED TO SET ASIDE THE DEED OF MARK HAYWOOD TO VIOLET GERTRUDE PEASLEY.

ARGUMENT

The evidence clearly indicates that the deed conveying the fee simple to Violet Gertrude Peasley was in consideration of her taking care of her father during his lifetime. The conveying of the property was pursuant to a contractual agreement and not a gift. The Oregon case of Gillian, et al v. Schoen, 157 Pac. 2nd 862, as cited in the Appellants' brief is not applicable in that the Oregon care involved a gift of real property.

The Appellants alleged that the deed was given by reason of undue influence by Violet Gertrude Peasley upon her father and at the time of the conveyance he was legally incompetent to enter into the transfer. The record does not contain any clear and convincing evidence that there was any undue influence or mental incompetence; to the contrary, the record shows that Mark Haywood was an alert, strong-minded gentleman up until approximately six (6) weeks prior to his death.

The evidence is not clear as to who requested Bruce

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Jenkins, attorney at law, to prepare the warranty deed for Mark Haywood. Surely Mr. Jenkins' advice could be considered competent and independent. As the record will indicate, Mr. Jenkins would not have prepared the deed or allowed the execution in his office if he had thought Mark Haywood was being unduly influenced by his daughter or that he was legally incompetent.

It is stated in 16 Am Jur, Deed, section 375, that a grantor in a deed is presumed to be sane and competent at the time he executed it.

In the Utah case of Blackburn vs. Jones, 59 Utah 558, 205 Pac. 582, where a son claimed his mother's land under deeds produced after the mother's death there was the absence of valuable consideration. It should also be noted in this case that it was apparent that the mother desired her children to share equally in her estate.

There is no evidence in the record before the Court where Mark Haywood desired to distribute his estate equally. To the contrary, Violet Gertrude Peasley was the only child who would enter into a contractual agreement with her father to take care of him. The other children were not interested in assuming the obligation.

POINT II.

THE COURT DID NOT ERROR IN NOT CHARGING THE ESTATE OF VIOLET GER-

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TRUDE PEASLEY WITH THE CASH MONIES THAT WERE IN THE POSSESSION OF MARK HAYWOOD AT THE TIME OF HIS DEATH.

ARGUMENT

This is surely a case where the rule of evidence applies that the evidence adduced by the Appellants must be clear and convincing.

All of the members of Mark Haywood's family knew he kept a sizeable sum of money in a metal box in his dresser drawer. There is a total absence of evidence in the record as to when and whom took the money or if the money is still in the house. The Appellants' brief indicates the money and box turned up missing at the death of Mark Haywood. This is an assumption that cannot be based upon the facts. The money could have disappeared months before Mark Haywood's death.

The record indicates that the Appellants began to look for the money the day that Mark Haywood died. They also began to search the residence when Violet Gertrude Peasley died and they have had exclusive possession subsequent to that time. It should also be noted that Mr. Anthony Peasley was present the day on which his wife passed away. (Violet Gertrude Peasley had filed a divorce action in the early part of 1961; Mr. Peasiley had lived at the residence

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on intervals during the period Violet Gertrude Peasley had taken care of her father.)

Many individuals knew of Mark Haywood's money and most of them had access to it. There is no evidence whatsoever to substantiate the Appellants' position that Violet Gertrude Peasley took the money and her estate should be charged with the loss.

I believe that the Trial Court determined the situation correctly when it stated: "In other words, the rule of button, button, who has got the button, seems to apply."

POINT III.

THE TRIAL COURT DID NOT ERROR WHEN IT DID NOT AWARD AND ADJUDGE THE JOINT BANK ACCOUNT PART OF THE ESTATE OF MARK HAYWOOD.

ARGUMENT

The Appellants' argument to support their position that the jonit bank account should be part of the estate of Mark Haywood is based upon the Utah case of First Security Bank of Utah, N.A. v. Iphegenea P. Demiris, 10 Utah 2nd 405, 345 Pac. 2nd 97. The facts in the Demiris case are not on all fours with the facts in our case. In the Demiris case, James C. Demiris, had his private bank accounts and he withdrew the money to

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place in a joint account with his wife prior to going to the hospital. His wife withdrew the money and Mr. Demiris passed away within the month. All of the above transactions took place within a six week period. There was evidence that the money placed in the joint account was money that Mrs. Demiris had not contributed to. Also there was much evidence that they did not get along together and had resided apart for some 13 years.

The facts before the Court in this matter are somewhat different. The joint account was opened on April 23, 1956 and $2,500.00 was withdrawn on July 14, 1961, some five years later. The Appellants have not produced any evidence as to whose money was placed in the joint account or where it came from. Surely this is not a situation where there was a grabbing of money at the earliest opportunity for the purpose of getting it for herself and excluding the cotenant.

It should also be noted that Violet Gertrude Peasley shared a very cordial and close relationship with her father.

In the Demiris case this Court did not disturb those joint bank accounts and war bonds that had existed in joint tenancy for various but considerable lengths of time. This Court applied the rule in the Demiris case that:

> "The withdrawal of moneys from a joint account does not destroy a joint tenancy, if one was created. It merely opens the door to competent

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evidence, if available, that no joint tenancy was originally created or intended."

The record in the case before the Court is totally void of any evidence that a joint tenancy was not originally created or intended.

It was held In re Crandall's Estate, 9 Utah 2d 161, 340 P 2d 760, that in reviewing the Findings of Fact this Court should indulge considerable latitude to the findings of the Trial Court and not disturb them unless the evidence clearly preponderates to the contrary.

CONCLUSION

Respondent submits her case on the facts in this case as disclosed by the record and the law applicable to the issues of this case.

Respectfully submitted,

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