1983

Ruth S. Hiltsley, Personally And Ruth S. Hiltsley, Administratrix of the Estate of Milton J. Hiltsley, aka H.J. Hiltsley v. Hallalene M. Ryder : Brief of Appellant

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IN THE SUPREME COURT FOR THE STATE OF UTAH

RUTH S. HILTSLEY, personally and RUTH S. HILTSLEY, Administratrix of the Estate of MILTON J. HILTSLEY, aka M.J. HILTSLEY,

Plaintiff & Respondent

vs.

HALLALENE M. RYDER,

Defendant & Appellant.

Case No. 19145

BRIEF OF APPELLANT

Appeal from a Judgment of the Third Judicial
District Court of Salt Lake County
Honorable Bryant H. Croft, Judge

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Plaintiff-Respondent,	:	
	:	Case No. 19145
vs.	:	
HALLALENE M. RYDER,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a case filed by plaintiff on her own behalf and as the administratrix of her husband's estate, against the defendant, (1) asserting rights as to certain monies disposed of by decedent prior to his death which were taken from a bank account(Ex.5P) held, at the time of closing the account,in the joint names of the decedent, the plaintiff and the defendant; and (2) to award one savings account(Ex.7P) and two savings

certificates(Ex.3P and 4P) to plaintiff even though held in the joint names of decedent and defendant.

DISPOSITION OF CASE BY LOWER COURT

The case was tried without a jury and the judgment was rendered in several parts. The Court rendered judgment in favor of the plaintiff in her own right against defendant for the sum of $4,924.66 holding that such sum represented plaintiff's share as a tenant in common in the bank account(Ex.5P) closed by decedent prior to his death.(R.97-98) The Court further ordered defendant to pay the personal representative of Etta Wood (a non-party) the sum of $10,000.00 representing the latter's contribution to such account(Ex.5P)(R.99,¶2). The Court further ordered defendant to pay to the personal representative of the estate of Etta Wood, all monies on deposit in a money market certificate at American Savings and Loan Association(Ex.4P), and all monies on deposit in a money market certificate at Prudential Federal Savings and Loan Association(Ex.3P)(R.99,¶3&4). The court further held that defendant was entitled to the monies held in the American Savings and Loan Association savings passbook(Ex.7P)(R.93¶23).

RELIEF SOUGHT ON APPEAL

Defendant-Appellant seeks an order reversing the Judgment and orders found in the Judgment of the Court as a matter

of law, and awarding defendant the amounts held in the money market certificates(Ex.3P and 4P).

STATEMENT OF FACTS

Plaintiff is the surviving wife of Milton J. Hiltsley (hereinafter decedent) who died on August 26, 1981. Plaintiff was appointed the personal representative of decedent's estate on October 7, 1981. Plaintiff brought this action in her representative capacity as personal representative, and on her own behalf making claim against the defendant of fraud, alienation of affections , undue influence, and for diversion by defendant of assets in which plaintiff had an interest as the wife of deceased or his personal representative.(R.3-5).

Decedent was a Pastor of the Baptist faith, ministering in Salt Lake City, Utah for 20 years prior to his death, first at the Bethel Baptist Church for three years and then the First Baptist Church of Holladay for the last seventeen years (R.149).

The decedent, the plaintiff and the defendant had a close, continuous and friendly relationship as friends, neighbors and church associates. For the past 20 years, defendant had been an active member of the churches over which decedent ministered, and served as clerk or secretary of the First Baptist Church of Holladay, and was one of its incorporators. (R.87, Findings ¶3-4).

Plaintiff and decedent were neighbors of the defendant, they visited and ate in each others homes together frequently, traveled together, shared a garden and worked together to keep the church going. (R.87-88, Findings ¶5).

Defendant made donations to deceased directly and deceased paid various expenses for defendant over the years. (R.88, Findings ¶6) Defendant did ironing for decedent, cut his hair and made gifts to the decedent and plaintiff (R.432-434).

The parties were such close friends that they even slept in the same room together while traveling. (R.195-196).

At the time of decedent's death, the passbook account(Ex.7P), and the two money market certificates (Ex.3P and 4P) were held in the joint names of M.J. Hiltsley (decedent) and Hallalene (or H.M.) Ryder (defendant).

The plaintiff had made no deposit to or withdrawal from these certificates and passbook account, and had no knowledge of them until shortly after decedent's death when she found them in the home, in a hollowed-out place under the fireplace in the study. (R.57-61, and 185-186).

LEGAL ARGUMENT

POINT I.

THE COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF THE ESTATE OF ETTA WOOD, A NON-PARTY.

The judgment of the trial court is that neither plaintiff nor defendant is entitled to the monies represented or evidenced by the money market certificates in American Savings and Loan Association #11-013277-9(Ex.4P) and Prudential Federal Savings and Loan Association #003-300,1723-1(Ex.3P) and that the monies in those two accounts, plus an additional $10,000.00 used by the decedent as his contribution to the down payment on the condominium purchased by the defendant and the decedent in their joint names with rights of survivorship, should be awarded and paid over to Etta Wood(R.98-99). (Etta Wood was the sister of the decedent who predeceased him). Said portions of the Judgment order the defendant to pay sums to Etta Woods' personal representative. Etta Wood was not, nor was her personal representative, a party to the action. No summons or complaint was ever served upon her or her personal representative, nor were any pleadings or claims at trial made by either litigant for or against Etta Wood or her estate.

A. Judgment May Not be Rendered in Favor of a Non-Party to the Litigation.

It is an elementary common law principle that a judgment may not be rendered in favor of one not a party to the action or proceeding. See 49 C.J.S. Judgments, §28, pp. 68-71; 46 Am Jur 2d, Judgments, §86; Houser v. Smith, et al, 19 U. 150, 56 P.683(1889); In re Pingrees Estate, 82 U. 437, 25 P. 2d 937, 90 ALR. 96 (1933); Tanner v. Provo Reservor Co., 99 U. 158, 103 P.

2d 134 (1940); McDonnell v. Southern Pacific Company, et al., 7[illegible] Ariz. 10, 281 P. 2d 792 (1955); Fazzi v. Peters, 440 P. 2d 242, 68 Cal. Reptr. 170, 68 C. 2d 590 (1968); Ex-parte Wren, 308 P. 2d 329, 48 C. 2d 159; Hurt v. Jones, 304 P. 2d 786, 147 C.A. 2d 164 (1957); In re Ferrero's Estate, 298 P. 2d 604, 142 C.A. 2d 473 (1956); Hutchinson v. California Trust Co. 111 P. 2d 401, 43 C.A. 2d 571 (1941); Greco v. Foster, 268 P. 2d 215, (Okla 1954); Anita Ditch Co. vs. Turner, 389 P. 2d 1018 (Wyo 1964); Ridley v. Vander Boegh, 511 P. 2d 273, 95 Ida 456 (1973); Windsor v. Powell, 497 P. 2d 292, 209 Kan. 292 (1972);Williams v. City of Valdez, 603 P. 2d 483, appeal after removed 624 P. 2d 820 (1979); and United States v. Union P.R. Co., 98 US 569, 24 L Ed 143.

The law in Utah is in agreement with this principle. As early as 1889 in the case of Houser v. Smith, supra, our Supreme Court considered the question of whether the trial court had the right to dispose of and adjudicate property rights of persons who were not parties to the case but strangers to the record. In that case, plaintiff sought to quiet title and recover possession of land pursuant to a decree entered in an earlier, but different action, wherein defendants Morgan and Carlston were not parties.

The trial court held that title was still in Morgan, that the earlier decree declaring the Smith to Morgan deed and the Morgan to Carlston mortgage void, was itself of no force or

effect because Morgan and Carlston were not parties to the suit where such rights were litigated. In affirming, the Utah Supreme Court said:

> The defendants Morgan and Carlston were strangers to the proceeding under which the decree was obtained. The property was wrongfully and illegally decreed to belong to another party, without the owners being made parties to the action, or having any opportunity to be heard in Court to defend the title thereto.
>
> * * *
>
> On the face of the record as shown, the decree in the case of Smith against Smith, insofar as it declares said deed and mortgage void, is wholly and absolutely void, and was rendered without jurisdiction over the persons or property of said Morgan and Carlston. It is not a question of collateral attack upon the judgment. The record presents a case where the judgment is shown to be absolutely void, and rendered against persons who were not before the court, and over whom the court had no jurisdiction. Courts have no right to dispose of and adjudicate upon the property rights of persons who are not parties to the case, and who are total strangers to the record. Van Fleet, Coll. attach, §16,494; Mosby v. Gisborn, 54 Pac. 121, 17 Utah_____. (Emphasis added)

The same principal was again applied in the case of Tanner v. Provo Reservor Co., supra, wherein the court stated at page 135 of the opinion,

> The Power Company is not a party to this suit but it was a party to No. 2888 Civil and is bound by that Decree....A decree in this suit cannot alter the rights and duties of the Power Company or bind it in any way whatever. (Emphasis added).

In the case of McDonnell v. Southern Pacific Company, supra, the trial court, in an action to quiet title to real property, rendered judgment finding a non-party to be the owner

in fee simple. On appeal, the Supreme Court of Arizona reversed, stating:

> A court has no jurisdiction to render a judgment in favor of one not a party to the suit. 30 Am Jur, Judgments §35; 49 C.J.S., Judgments §28; Bachman v. Sepulveda, 39 Cal. 688; Dunlap v. Southerlin, 63 Tex. 38; Maurer v. International Re Insurance Corp., Del., 95 A. 2d 827. Parties cannot be brought into court and a valid judgment rendered for or against them by merely including them in the judgment. As was well said in Dunlap v. Southerlin, supra;
>
> > Courts have no more power, until their action is called into exercise by some kind of pleading to render a judgment in favor of any person than they have to render judgment against a person until he has been brought within the jurisdiction of the court in some method recognized by law as sufficient;...

In the case of Hutchinson v. California Trust Company, supra, the plaintiff sued the special administrator of his deceased wife's estate to have determined the ownership of a bank account. The plaintiff sought a declaration that the money in the account was community property, not the deceased's separate property.

The trial court determined that the bank account was a gift to the deceased wife, therefore not community property, and ordered the account to be distributed equally between the sons of the plaintiff and deceased wife according to an agreement executed prior to probate.

In refersing the holding of the trial court, the appellate court stated, at page 403:

An additional reason for holding that the court erred

> in ordering that the entire estate be distributed equally to Peter and Tony Hutchinson in accordance with the agreement with their father may be found in the fact that Peter and Tony Hutchinson are not parties to the present action, which was commenced for the purpose of determining ownership of the bank account as between plaintiff and defendant administrator. A judgment may not be rendered either against or in favor of one who is not a party to the action. (Emphasis added)

In addition to the above, a review of Rule 19(b) Utah Rules of Civil Procedure shows the error of the trial court in this matter.

> (b) Effect of failure to join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to service of process, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does not affect the rights or liabilities of absent persons. (Emphasis added)

B. Trial Courts' Findings that Decedent Held Thirty Thousand Dollars ($30,000.00) in Trust for Etta Wood Based upon Insufficient Evidence and Manifest Speculation.

The trial court's judgment, ordering defendant-appellant to pay the personal representative of Etta Wood the sum of $10,000.00 representing funds withdrawn from a passbook account(ex.5P) and used by the decedent in the down payment on the purchase of the condominium of the defendant, and further ordering the defendant-appellant to pay over to the personal representative of the estate of Etta Wood all sums on deposit in

certificate #11-013277-9 at American Savings and Loan(Ex.4P) an all sums in certificate #003-300723-6 at Prudential Federal Savings and Loan(Ex.3P) was based upon the finding of the trial court set forth in paragraph 24 of the Findings of Fact and Conclusions of Law(R.94) as follows:

> It seems clear the decedent must be considered as having received the $30,000.00 from Etta Wood in trust for her and this money was not his money to invest as he did and did not become his upon her death to give away or use for his own purposes.

The sum total of all the evidence submitted to the cour on this matter is represented by certain statements made by the defendant on cross-examination and certain entries contained in the ledger, Exhibit 10-P.

After testifying that the decedent had inherited $21,000.00 from his brother (R.210-211), the following question and answers appear in the transcript(R.212) beginning on line 2

> Q. Did Mr. Hiltsley also have a sister who lived in New Mexico?
> A. Yes.
> Q. And did that sister die prior to the time of your husband's death?
> A. About '80.
> Q. And did she leave to Mr. Hiltsley a sum of money?
> A. Yes.
> Q. And how much money was that?
> A. Well, I can't--here again, I can't say just what because my husband never told me very much. But as far as I can figure out, Etta, that is my sister-in law, when she came up to live with us, she was in and out of the hospital quite a number of times 'cause she had lung cancer and this time she was in the hospital and I think my husband said that there was about four or five thousands in debt. Now, whether that came out of the $20,000.00 that he inherited I don't know.

(Emphasis added)

The only other evidence on the matter is Exhibit P-10 where on page 253 the following notations are shown:

> 10/5/79 received money from Etta's account transferred to Salt Lake from Albuquerque, N.M.--$30,000.00 plus 314--a shortage of $8.+-
> The AM Savings will check the shortage for me--placed $10,000.00 in savings passbook,
> placed $10,000.00 in money market at AM Savings,
> $10,000.00 in money market @ PFS.

As stated above neither party introduced the above testimony or exhibit for the purposes of showing how decedent acquired the funds or what his obligations were regarding those funds, or what ownership he had in the funds. However, from such scanty evidence, the court made the findings represented in paragraph 24 of the Findings of Fact, (R.94,¶24 Findings) referred to above.

Admittedly, presumptions form an important part of the law of evidence generally. However, defendant-appellant submits that to presume or infer from such evidence as there is in this case, as the trial court did, that (1) the decedent held $30,000 in trust for Etta Wood (R.89-92, Findings ¶15-19) and (2) the $30,000.00 is traceable into the certificates and accounts in question, is nothing more than manifest conjecture and speculation.

A reading of the trial court's findings relative to these matters only points out the uncertainty of the entire decision.

Referring to Exhibit 4P, the money market certificate a American Savings, the trial court said:

> Although no evidence at the trial was given tracing the history of the account, the account, on February 14, 1980 was shown as $12,000.00. From Exhibit 10-P it would appear that $10,000.00 from Etta Wood's account received by decedent on October 5, 1979 was placed in this American Savings account, and the only inference that can be drawn is that the initial $10,000.00 deposit came from Etta's transferred funds. (R.92, Findings ¶18). (Emphasis added)

In paragraph 18 of the trial court's Findings, (R.92) the court attempts to trace Exhibit 3P back to Etta Wood's fund but, from the evidence can only trace it back to the opening of account No. 715-100-837-3 opened February 22, 1980 and closed August 28, 1980 by withdrawal of $16,161.29. Yet from the entr on page 253 Exhibit 10P, upon which the court bases its findings, the deposit of $10,000.00 appears to have been made "10/5/79". There was no tracing of the account back to 10/5/79 No evidence was submitted to show how $10,000.00 deposited on 10/5/79 had grown to $16,161.29 within a few months. The trial court, however, finds in paragraph 19 of the Findings (R.92) that "Court finds that a substantial portion, if not all, of Account No. 715-101422-2 (Ex.3P) is the Etta Wood original $10,000.00 deposit and earnings thereon held as trustee for Et Wood."

The court has presumed from the entry on page 253 of Exhibit 10P, that the decedent held Etta's monies for her in trust. It then presumes, on the basis of even less certain

evidence, that such monies were deposited into the accounts or certificates before the court.

The Utah Supreme Court recognized the basic principle that a presumption cannot be based upon a presumption as early as 1916 in Denver & R.G.R. Co. v. Ashton-Whyte-Skillicorn Co., 49 Utah 82, 162 Pac. 83 (1916), wherein this Court held:

> As the record now stands, however, the presumption of defendant's negligence must be based upon another presumption, namely that the cars were in the actual control and management of the defendant when they escaped. This would result in basing one presumption upon another which would be violation of an elementary rule of evidence Id. at 85.

The same rule is well stated in Splinter v. City of Nampa, 74 Idaho 1, 10, 256 P. 2d 215, 220 (1953).

> Circumstantial evidence is competent to establish negligence and proximate cause. Facts, which are essential to a liability for negligence, may be inferred upon circumstances which are established by evidence. But, where circumstantial evidence is relied upon, the circumstances must be proved, and not themselves be left to presumption or inference. (Citation.) This court has held that inference cannot be based upon inference, nor presumption on presumption. (Citations.)
>
> The underlying principle applicable here is that a verdict cannot rest on conjecture; that where a party seeks to establish a liability by circumstantial evidence, he must establish circumstances of such nature and so related to each other that his theory of liability is the more reasonable conclusion to be drawn therefrom, and that where the proven facts are equally consistent with the absence, as with the existence, of negligence on the part of defendant, the plaintiff has not carried the burden of proof and cannot recover. (Citations.) (Emphasis added.)

A presumption or inference of fact must not be drawn from premises which are uncertain, but must be founded on facts

established by direct evidence. In this respect, this Court held in Lindsay v. Gibbons and Reed, 27 Utah 2d 419, 497 P. 2d 28 (1972) that:

> (A) finding of causation cannot be predicated on mere speculation or conjecture, and the matter must be withdrawn from the jury's consideration, unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act of the defendant. (Milligan v. Capitol Furniture Co., 8 Utah 2d 383, 387, 335 P. 2d 619 (1959).)

POINT II

DEFENDANT-APPELLANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW, ON ALL ISSUES.

A. The Trial Court Erred in its Application of the Law as to Ownership of Joint Account During Lifetime.

The trial court found that the American Savings and Loan Association savings account #1-048466 (Ex. 5-P) which had been closed by decedent twenty-two (22) months before his death, was an account held by tenants in common. Further the trial court determined that

> .... the proceeds should be divided equitably between the plaintiff and defendant as follows: $10,000.00 to be held for the account of Etta Wood and subject to probate of her estate; $16,150.68 allocated to defendant as her contribution to the account; $9,849.32 divided between the other tenants in common, Ruth Hiltsley and deceased (sic defendant) each having an interest of $4,924.66. The balance of the account $1,481.21, the deceased distributed in the manner determined by him to be equitable.(R.90, Findings ¶16(1)(d)).

The trial court apparently "bought" the argument of plaintiff that once a tenant in common account was established

the interest of one co-tenant could not be destroyed by the action of the other co-tenant. Said savings account was closed by decedent on October 29, 1979, twenty-two months prior to his death, by a withdrawal of the monies therein and used as part of the down payment on the condominium purchased by the defendant and decedent in their joint names.(R.90, Findings ¶16(a)).

It is important to note, however, that although the trial court made a finding that the account was a "tenancy in common" account, and awarded plaintiff $4,924.66 (R.97) as her share of the account, yet the court allowed the decedent to distribute $1,481.21 of the account "in the manner determined by him to equitable".(R.91, Findings ¶16(d).

The law relative to ownership of a joint account during the lifetime of the parties thereto is set forth in §75-6-103 (1), Utah Code Annotated, 1953 as amended, which states:

> A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

§75-6-101 (6), Utah Code Annotated, 1953 as amended, defines net contribution as follows:

> "Net contribution" of a party to a joint account as of any given time is the sum of all deposits to it made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a prorata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit, life insurance added to the account by

reason of the death of the party whose net contribution is in question.

As regards the claim of the plaintiff that she had an ownership interest in the account by virtue of the account being a "tenancy in common" account, which interest could not be alienated by her husband during his lifetime, appellant refers this court to the last two sentences of the Editorial Board Comment following §75-6-103, wherein it is stated:

> The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals; the right of survivorship which attaches unless negated by the form of the account really is a right to the values theretofore owned by another which the survivor receives for the first time at the death of the owner. That is to say, the account operates as a valid disposition at death rather than as a present joint tenant.

It follows, therefore, that the decedent had the absolute right to withdraw the monies from said account for purposes satisfactory to him and the plaintiff had no interest in those monies unless and until the decedent died leaving the account in her joint name.

B. Plaintiff-Respondent Offered No Evidence of The Intent of The Decedent-Depositor in Creating Joint Accounts.

The holdings of Utah cases such as McCullough v. Wasserback, 30 U. 2d 398, 518 P. 2d 691 (1974) Pagano v. Walker 539 P. 2d 452 (U. 1975) and Spader v. Newbold, 29 U. 2d 453, 51 P. 2d 153 (1973) established rules regarding the ownership of

joint bank accounts upon the death of the depositor. To the extent that those rules relate to actions against the estate of the decedent, they have now been codified in §75-6-104 (1) Utah Code Annotated, 1953, as amended where it provides as follows:

> Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.

The plaintiff alleged no claim in her pleadings and offered no evidence at trial of a different intention on the part of the deceased than to have the surviving joint tenant have the funds in the certificates. In fact, the Will of the decedent executed August 9, 1978 (Ex.6P) offered by plaintiff states:

> Thirdly. I direct all savings certificates, savings accounts and checking accounts held jointly by myself and another, shall become the sole property of such surviving co-signer.

C. Plaintiff-Respondent's Allegations of Fraud, Alienation of Affections and Undue Influence are Not Supported by the Evidence.

The plaintiff rested her case on the theory that she was entitled to the certificates in issue because of the allegations of fraud, alienation of affections and undue influence made by her.

The trial court correctly made findings of fact contrary to such allegations:

9. Other than the Will preparation and the manner in which deceased handled his findings, plaintiff did not produce evidence of alienation of her husband's affections for her.(R.88)

10. Court is unable to determine why the deceased favored defendant over plaintiff on the financial transactions described herein...(R.88)

25. As to the claims for relief made by the plaintiff, the evidence does not establish the essential elements of fraud in this case. Nor does the Court find evidence of willful and malicious conduct on the part of defendant such as would support the claim for punitive damages.(R.94)

CONCLUSION

Based upon the foregoing, it is submitted that the Court had no power to render judgment in favor of a non-party to the litigation and that such judgment is null and void; that in any event, the evidence to support a finding of the Court that the decedent held monies in trust for said non-party is based upon insufficient and speculative evidence; that the plaintiff has failed to bear her burden of proving a different intent on the part of decedent in establishing the accounts than that the surviving tenant should own the certificates; that plaintiff has failed to prove any other ground for awarding the accounts to her as against the defendant. Based upon the foregoing, the Judgment of the trial court should be reversed and defendant awarded the funds in the certificates at American Savings and Loan Association account #11-613277-9(Ex.4P) and Prudential Federal Savings and Loan Association account

#715-101,422-2(Ex.3P), as the sole surviving joint tenant to said certificates, and the judgment in favor of plaintiff in the amount of $4,924.26 should be reversed as well as the Order requiring the plaintiff to pay amounts to the personal representative of Etta Wood.

Respectfully submitted,

McKAY, BURTON, THURMAN & CONDIE

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Dated September 2, 1983.

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing were hand-delivered this 2nd day of September, 1983 to:

Dwight L. King
2121 South State Street
Salt Lake City, Utah
Attorney for Plaintiff-Respondent

DHCondie