

1983

**Ruth S. Hiltsey, Personally And Ruth S. Hiltsey, Administratrix of the Estate of Milton J. Hiltsey, aka H.J. Hiltsey v. Hallalene M. Ryder : Respondent's Brief**

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Dwight L. King; Attorney for Respondent

---

**Recommended Citation**

Brief of Respondent, *Hiltsey v. Ryder*, No. 19145 (1983).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/4713](https://digitalcommons.law.byu.edu/uofu_sc2/4713)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).



TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE KIND OF CASE .....	1
DISPOSITION IN LOWER COURT .....	1
RELIEF SOUGHT ON APPEAL .....	1
STATEMENT OF FACTS .....	2
ARGUMENT .....	7
POINT I	
THE FINDINGS OF THE COURT ARE SUPPORTED BY SUBSTANTIAL AND UNCONTRADICTED EVIDENCE ...	7
POINT II	
DEFENDANT NOW HAS COLOR OF TITLE TO ASSETS OF PLAINTIFF AND ESTATE OF ETTA WOOD .....	7, 13
POINT III	
DEFENDANT IS BARRED FROM ATTEMPTING TO RELITIGATE THE OWNERSHIP OF THE ASSETS RECEIVED FROM M. J. HILTSLEY BY DOCTRINE OF EQUITABLE ESTOPPEL .....	7, 15
CONCLUSION .....	18

CASES CITED

<u>Nielson v. Droubay</u> , Utah 652 P.2d 1293 .....	17
<u>Park v. Zions First National Bank</u> , et al, filed September 22, 1983 .....	12
<u>Schaer v. State, by and through Utah Department of Transportation</u> , Utah 657 P.2d 1337... 18	18
<u>Wilde v. Mid-Century Insurance Co.</u> , Utah, 635 P.2d 417 .....	16, 17

STATUTES CITED

Utah Code Ann. §75-3-101 .....	13
Utah Code Ann. §75-1-106 .....	13

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

RUTH S. HILTSLEY, )  
 )  
 Plaintiff-Respondent, )  
 )  
 vs. )  
 )  
 HALLALENE M. RYDER, )  
 )  
 Defendant- Appellant. )

---

No. 19145

STATEMENT OF THE KIND OF CASE

Defendant appeals from judgment in favor of the Plaintiff granting a \$4,924.66 judgment in favor of Plaintiff personally and determining that Money Market Certificates or savings deposits amounting to \$33,623.43, and an investment of \$10,000.00 in Defendant's condo, were assets of Etta Wood, a deceased sister of the deceased Milton J. Hiltsley.

DISPOSITION IN LOWER COURT

The case was tried to the court from a judgment in favor of Plaintiff as to \$4,924.66 and determining that other assets had been disposed of by the deceased Milton J. Hiltsley during his lifetime which belonged to his deceased sister, Etta Wood, Defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the judgment and an award of all monies ordered by the court paid to Plaintiff and the heirs of Etta Wood. Plaintiff requests that the judgment be affirmed.

STATEMENT OF FACTS

Plaintiff in the case is Ruth Hiltlsley as the Personal Representative of the estate of Milton J. Hiltlsley and in her own behalf as the surviving widow.

During the trial of the case before Judge Croft, there was introduced in evidence a journal kept by Milton J. Hiltlsley during his lifetime and in his own handwriting. It is Exhibit 10-P. It was used by all parties and accepted without objection for its content by the court. An entry at Page 253 of Exhibit 10-P contained the following language:

Received money from Etta's account, transferred to Salt Lake from Albuquerque, New Mexico, \$30,000 plus \$314, a shortage of \$8.00 plus.

The entry also contains the following language:

Placed \$10,000 in savings passbook. Placed \$10,000 in money market at Am Savings, \$10,000 in money market at PFS.

Certificates of deposit and Money Market Certificates were introduced to trace through the disposition of the \$30,000.00 that was received on the 5th of October, 1979. Judge Croft, in an extensive and carefully written Memorandum Decision (Tr. 38-55), traced the various sums from the Etta Wood original deposits into Account No. 11-013277-9 at American Savings. This account was originally in the name of M. J. Hiltlsley and Ruth S. Hiltlsley. It was opened on February 14, 1980. It was closed on August 25, 1981, the day before Milton J. Hiltlsley died. A certificate was issued August 25, 1981 in the name of M. J.

Hiltsley and Defendant Hallalene M. Ryder, with an opening amount of \$15,259.78.

Defendant made no claim to any of the proceeds in the account prior to the date that it was opened in her name and the deceased on August 25, 1981. Court found that this initial deposit at American Savings & Loan of \$10,000.00 came from the Etta Wood transferred funds.

The court traced \$10,000.00 from Etta Wood into Account No. 715-101422-2 at Prudential Federal Savings & Loan, originally in the name of M. J. Hiltsley alone, and was eventually traced to Money Market Certificate No. 11647 issued on February 25, 1981 in the face amount of \$17,000.00 to M. J. Hiltsley and Hallalene Ryder as joint tenants with right of survivorship. This Money Market Certificate was found in the home of Plaintiff following the death of M. J. Hiltsley. It was claimed by Defendant Ryder under an Affidavit and Guarantee for Lost Evidence of Account (Ex. 30-P). Through this document, Defendant caused Prudential Federal Savings & Loan to issue a new savings account, No. 003-300723-6 (Ex. 32-P), in the name of Hallalene Ryder and W. Fred Hansen as joint tenants. Neither Ryder nor Hansen claimed any interest in the funds at Prudential Federal Savings & Loan prior to the issuance on February 25, 1981 of the Money Market Savings Certificate.

An additional account at American Savings & Loan Association is Account No. 1-048466, which contained Etta Wood funds. It was

did not believe his upon her death to give away or use for his own purposes. It is thus apparent that at least \$10,000.00 in each of the three accounts mentioned came from Etta's funds. (Tr. 53).

The findings by the Court are relatively free from dispute. They are based on bank records and the notations contained in deceased Milton J. Hiltzley's own handwriting in Exhibit 10. Defendant makes no claim that any of these monies came from her sources.

Plaintiff proposed Findings of Fact and Conclusions of Law and a Judgment embodying her theory of the legal principles applicable to the Court's Memorandum Opinion, and proposed in the Judgment a decree that the \$10,000.00 invested in the condominium of Defendant, together with interest from the first of November, 1979, be a judgment in favor of the estate of Milton J. Hiltzley to be held in trust for the heirs of Etta Wood and requiring the Personal Representative to account to the heirs of Etta Wood (R. 83 ¶2). Plaintiff also proposed an Order that judgment be awarded against Defendant for the sum on deposit in Account No. 11-013277-9 at American Savings & Loan, an American Savings & Loan Money Market Certificate, with the further order that the Personal Representative of Milton J. Hiltzley account to the heirs of Etta Wood for this fund and hold it as trustee for the heirs of Etta Wood, deceased (Tr. 84 ¶4). Plaintiff also proposed that judgment be granted that the proceeds in Account No. 11-013277-8 at Prudential Federal Savings & Loan in the

amount of \$18,326.15, to be paid to the Personal Representative of deceased Mother's will trust, to be held in trust for the benefit of Etta Wood until 7/1/80.

Court refused to sign the judgment. Defendant specifically objecting to the paragraphs containing the language proposed by Plaintiff (Tr. 67), and made the Findings of Fact and Conclusion of Law and Decree from which Defendant now appeals.

In the judgment as finally signed by the Court, Defendant is ordered to pay to the Personal Representative of Etta Wood the sum of \$10,000.00, together with interest from and after the first of November, 1979, the sum invested on November 1, 1979 in her condo (Tr. 98 ¶12). Defendant was also ordered to pay the Personal Representative of the estate of Etta Wood all sums on deposit in Account No. 11-0132779 at American Savings & Loan. Balance in said account at the time of trial, \$19,259.75 (Tr. 75), and then ordered Defendant to pay the Personal Representative of Etta Wood all the proceeds of Account No. 313-301,722-0 at Prudential Federal Savings & Loan in the amount of \$18,036.65 as of the 4th of September, 1981 (Tr. 97).

The record seems clear that the amount of money awarded to the Plaintiff herein is being held in trust for the benefit of the Judgment creditor of the estate of Mother's will trust. The fact came to the attention of the law firm which drafted the will of Mother and the fact that the law firm was not the law firm which drafted the will of Mother and the fact that the law firm which drafted the will of Mother was not the law firm which drafted the will of Mother.

and awarded her to the Defendant the monies that the records reflected came from her assets.

ARGUMENT

POINT I

THE FINDINGS OF THE COURT ARE SUPPORTED BY SUBSTANTIAL AND UNCONTRADICTED EVIDENCE.

POINT II

DEFENDANT NOW HAS COLOR OF TITLE TO ASSETS OF PLAINTIFF AND ESTATE OF ETTA WOOD.

POINT III

DEFENDANT IS BARRED FROM ATTEMPTING TO RELITIGATE THE OWNERSHIP OF THE ASSETS RECEIVED FROM M. J. HILTSLEY BY DOCTRINE OF EQUITABLE ESTOPPEL.

POINT I

THE FINDINGS OF THE COURT ARE SUPPORTED BY SUBSTANTIAL AND UNCONTRADICTED EVIDENCE.

The Court carefully examined the several accounts in which M. J. Hiltzley, Ruth Hiltzley, and H. M. Ryder appeared to have an interest, and Plaintiff submits that his analysis is in every respect accurate and supported by the exhibits and the other evidence. There was no evidence presented contrary to the findings of the Court or no document which contradicted his analysis.

Exhibit 5-P is American Savings & Loan passbook, Account No. 104586, and contains the record of funds used to buy defendant's car. It shows on October 5, 1979 a deposit of \$1,000.00, which exhibit 10 indicates deceased Hiltzley recorded in a separate passbook. It then contains the balance sheet with the total of \$37,379.11.

Exhibit 40-D supplied by Defendant shows the sums that she contributed to the purchase price of the condominium. Two checks to close out this balance are exhibits. They are Exhibit 20-P and Exhibit 21-P. Neither of the checks was endorsed by Plaintiff, though made payable to her. Exhibit 21-P was payable to all three, the Hiltsleys and H. M. Ryder. The Court determined that Ruth Hiltsley was a tenant in common in the proceeds in American Savings & Loan as shown by the passbook (Ex. 5-P). He gave the Defendant credit for all sums that she deposited into the account, held that the \$10,000.00 item was an asset of the heirs of Etta Wood, and then divided the difference between the tenants in common, M. J. Hiltsley and Ruth S. Hiltsley, since Ruth Hiltsley did not endorse the checks on the condo, and awarded her the judgment for \$4,924.66, her undivided one-half. Plaintiff submits that there can be no question about the accuracy and the propriety of the award to the heirs of Etta Wood and Ruth Hiltsley of the sums that are invested in the Defendant's condo.

Etta Wood died on the 20th of January, 1980 (Ex. 10, pg 248). The record of M. J. Hiltsley shows that \$10,000.00 in money market at American Savings & Loan was invested out of her \$30,000.00 (Ex. 10, pg 253). The records at American Savings & Loan show an account opened on the 14th of February, 1980 in the amount of \$12,000.00, Account No. 11-013277-9, is referred to on the Money Market Certificate (Ex. 4-P) in the face amount of \$15,259.78.

The account was changed into the name of M. J. Hiltsey and Defendant Hallalene M. Ryder on the 25th of August, 1982 as shown by Exhibit 19-P. This was the day before M. J. Hiltsey died. Court found that this account contained the \$10,000.00 of Etta Wood, money referred to in the ledger as being invested in the Money Market Certificate at American Savings & Loan. This is one of the items that the trial court held to be an asset of the estate of Etta Wood and the property of her heirs.

The documents support in every way the finding of the Court. There was no contrary evidence, and Defendant makes no claim that she in any way contributed to the American Savings & Loan Account No. 11-013277-9 represented by the Money Market Certificate.

Two accounts are shown to have been at Prudential Federal Savings & Loan. One account in the name of M. J. Hiltsey and Hallalene Ryder was opened on the 19th of July, 1979 and paid out on the 16th of July, 1981. This account is shown by Exhibits 22-P and 23-P. The account predates the receipt by M. J. Hiltsey of the Etta Wood assets and the payment does not correspond to any of the payments that are material to disposition of this matter. Court held that this item was not involved in the Etta Wood estate or gave no interest in it to the Plaintiff. What happened to the money upon payment is not known.

The other account was opened at Prudential Federal Savings & Loan on the 22nd of February, 1980 (R. 24-P) in the name of M. J. Hiltsey only. It was closed on the 28th of August, 1980

and is numbered 715-100,837-3. A check closing this account in the amount of \$16,161.74 was cashed on August 28, 1980 (Ex. 25-P). On August 28, 1980 the record shows that M. J. Hiltzley opened Account No. 715-100,837.3 (Ex. 26-P) in the name of himself and Ruth S. Hiltzley. This account was closed on February 26, 1981 (Ex. 26-P) by withdrawal of \$16,842.64. On February 25, 1981, M. J. Hiltzley opened Account No. 715-101,422-2 in his own name and the name of Hallalene Ryder (Ex. 29-P). The amount deposited in said account consisted of cash in the sum of \$157.36 and a check of \$16,842.64, for a total deposit of \$17,000.00 (Ex. 34-P). The check is Exhibit 35-P. An explanation of the savings loan transaction slip is on the face of the slip (Ex. 28-P), showing the closing of Account No. 715-101,422-2. The account opened on February 26, 1981 was numbered 715-101,139-6 (Ex. 28-P, Ex. 27-P).

Exhibit 3-P is the Money Market Certificate numbered 11647, which shows the transaction into M. J. Hiltzley and Hallalene Ryder's name of the \$17,000.00 account that was closed on the 25th of February, 1981.

After the death of Milton J. Hiltzley, the Defendant obtained from Prudential Federal Savings a Loan a transfer of the item in Account No. 715-101,422-2, which then contained the amount of \$18,363.65, into Account No. 715-101,716, which was taken in the name of herself and Fred Hansen (Ex. 31-P, Ex. 32-P). Affidavit on which the bank made its transfer is in Exhibit 36-P. Exhibit 37-P is Exhibit 37-P.

The Court found that the \$10,000.00 referred to in Exhibit 10, page 253, as in money market at PFS, is the money that eventually became Money Market Certificate 11646, which was the deposit plus earnings belonging to the heirs of Etta Wood.

The Money Market Certificate at Prudential Federal Savings & Loan, the American Savings & Loan Money Market Certificate, have not been disbursed by either of the savings institutions, but are held pending the outcome of this litigation. It is Plaintiff's position that the trial court, in his analysis of the savings accounts and the source of monies in the savings accounts and Money Market Certificate, was clearly supported by the documentary evidence and by the notations in the record of deceased M. J. Hiltsey. Defendant makes no claim that any of the monies deposited in the Prudential Federal Savings & Loan Money Market Certificate came from her or any contribution was made by any other party. Plaintiff Ruth Hiltsey concurs in the analysis of the trial court and submits that it is supported by uncontradicted, reliable and substantial evidence.

Clearly the evidence supports the trial court's Findings of Fact, Conclusions of Law and Decree that the \$10,000.00 investment in the condo, the American Savings & Loan Money Market Certificate, and the Prudential Federal Savings & Loan Money Market Certificate are items traceable to the estate of Etta Wood. The statement in the court's Memorandum Opinion (p. 20), reads as follows:

It seems clear to me that Milton must be considered as having received that \$30,000.00 in trust for Etta 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. It is thus apparent that at least \$10,000.00 in each of the three accounts mentioned came from Etta's funds.

It is supported by clear, convincing and undisputed evidence.

The finding by the Court would classify Milton J. Hiltsley as a "conscious wrongdoer". This court has held in Park v. Zions First National Bank, et al, filed September 22, 1983, that such a wrongdoer may be held to restore the fund diverted and also pay all profits. The language of the court seems especially fitting in the facts of the present case:

Where a person by the consciously wrongful disposition of the property of another acquires other property, the person whose property is so used is not only entitled to hold the wrongdoer personally liable for the value of the property wrongfully disposed of but he is entitled as an alternative to the property so acquired. If the property so acquires is or becomes more valuable than the property used in acquiring it, the profit thus made by the wrongdoer cannot be retained by him; the person whose property was used in making the profit is entitled to it. Restatement of Restitution Section 202 comment c (1937).

The reasoning behind this rule has been stated thus:

If, however, the wrongdoer were permitted to keep the profit, there would be an incentive to wrongdoing, which is removed if he is compelled to surrender the profit. The rule which compels the wrongdoer to bear any losses and to surrender any profits operates as a deterrent upon the wrongful disposition of the property of others.

The Personal Representative of Milton J. Hiltsley is vitally interested in retrieving the property diverted from Etta

Wood's estate since the estate is liable for such diversion.

POINT II

DEFENDANT NOW HAS COLOR OF TITLE TO ASSETS OF PLAINTIFF AND ESTATE OF ETTA WOOD.

It is undisputed that there are assets to which Defendant presently has title and on which the court has determined a trust should be imposed in favor of the heirs of Etta Wood.

The Probate Code of the State of Utah, UCA 75-3-101, provides that upon the death of a person, his real and personal property devolves to his heirs. Upon the death of Etta Wood, the property that she owned then devolved to her heirs.

It is undisputed that the deceased Milton J. Hiltsley did not distribute the property received from Etta Wood to her heirs and did not make any attempt whatever to probate the estate of Etta Wood.

UCA 75-1-106, entitled "Effect of Fraud and Evasion", provides that if fraud is used to avoid or circumvent the provisions or purposes of the Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person other than a bona fide purchaser benefiting from the fraud, whether innocent or not.

It is apparent that the Probate Code is intended to provide relief to people who are in the position of Plaintiff or who are in the position of the heirs of Etta Wood.

As has been set out in the Findings of Fact, Conclusions of Law and Judgment of the court (Tr. 86-98), the mechanism for recognizing the interest of the heirs of Etta Wood was that the assets should be paid to the Personal Representative of Etta Wood. The alternative method proposed by Plaintiff at the trial level (Tr. 69-85) was a judgment in favor of the Personal Representative of Milton J. Hiltsley and a trust imposed on the proceeds for the benefit of the heirs of Milton J. Hiltsley. This proposal was objected to by the Defendant, who now appeals from the decision to give a direct judgment rather than impose a trust on the asset in the estate of Milton J. Hiltsley.

An ultimate effect of the procedures followed by the court or as proposed by Plaintiff would be the same. As the court now knows, there has been a Personal Representative appointed for the estate of Etta Wood and motion filed by Plaintiff's attorney to join the estate of Etta Wood in this action.

As Plaintiff reads the brief of Defendant, it is an objection to the court determining that there are assets subject to a trust in the estate of Milton J. Hiltsley which are in possession under claim of title by Defendant. A modification of the order of the court giving a direct judgment to the Personal Representative of Milton J. Hiltsley, then imposing a trust on the assets in favor of the estate of Etta Wood, should be a simple matter for this Court to order if that result is deemed appropriate.

The Findings and Conclusions of the trial court that the assets handled by deceased M. J. Hiltsley are trust assets, are supported by uncontroverted, substantial evidence. Plaintiff submits the evidence is undisputed. Certainly relitigation or retrial of this matter is not an efficient or necessary result which should be ordered by this Court.

POINT III

DEFENDANT IS BARRED FROM ATTEMPTING TO RELITIGATE THE OWNERSHIP OF THE ASSETS RECEIVED FROM M. J. HILTSLEY BY DOCTRINE OF EQUITABLE ESTOPPEL.

Defendant, in the trial of the matter, had every opportunity to litigate the question of the source of the assets that ultimately came into her possession and on which she had a record title. There is no claim that she made any contribution to the assets or that there were any of her assets commingled with the judgment in favor of the Plaintiff or the determination that there was a trust on the assets handled by M. J. Hiltsley which he received from his deceased sister, Etta Wood. Defendant had every opportunity to present any evidence of her interest in the assets or any evidence she might have relating to the use by M. J. Hiltsley of the assets of Etta Wood.

It is respectfully submitted that there is no evidence of any kind that the assets that were ultimately used and which came into the hands of Defendant were not assets of the estate of Etta Wood. The \$4,900.00 judgment that Plaintiff obtained

by reason of her tenancy in common relationship in the savings account at American Savings & Loan is clearly supported and undisputed and legally unassailable.

Clearly the law is that one tenant in common cannot dispose of another tenant in common's asset without the nonparticipating tenant in common consenting or being willing that her asset be used. It seems relatively undisputed that the Plaintiff, in her personal right, is entitled to a judgment of the \$4,900.00 interest in the condominium of Defendant.

As to the balance of the bank accounts, having had an opportunity to litigate and to present all evidence available on the ownership of the assets in her possession and on which she has record title, Defendant is now barred from relitigating this issue by the doctrine of equitable estoppel.

This Court, in a series of recent cases, has clearly and carefully set down the manner in which the doctrine of equitable estoppel prevents the relitigation of issues that have been litigated in a trial proceeding. In Wilde v. Mid-Century Insurance Co., Utah, 635 P.2d 417, this Court states the doctrine in the following language:

The doctrine of collateral estoppel governs the resolution of the issues in this case. The purpose of that doctrine is to prevent the relitigation of issues which a party has once actually litigated. As the doctrine was originally formulated, it required that the parties be the same in the first and second litigation. Mutuality of parties is no longer essential, however. This jurisdiction, following the landmark decision in Bernhard v. Bank

of America Nat'l Trust & Savings Assoc., 19 Cal.2d 807, 122 P.2d 892 (1942), dispensed with mutuality in collateral estoppel cases. Searle Bros. v. Searle, Utah, 588 P.2d 689 (1978).

Court set down the principles involved and necessary for the doctrine of equitable estoppel in the following language:

[2,3] To invoke the doctrine, it must be demonstrated (1) that the issue decided in the previous action was identical to that tried in the subsequent action; (2) that the issue was decided in a final judgment on the merits; and (3) that the issue in the first case was competently, fully, and fairly litigated by the party against whom the doctrine is invoked. Searle Bros. v. Searle, Utah, supra, at 691. See also Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal.2d 601, 25 Cal.Rptr. 559, 375 P.2d 439 (1962). If these conditions are met, the party against whom the original judgment was rendered is bound, and so are those in privity with that party.

There has been an argument made in the past that a party not a litigant could not be bound by the doctrine of equitable estoppel since the party would not be objecting to the findings of the court had the issues been decided against such a party, and that the doctrine of mutuality prevents such a party from taking advantage of the doctrine of equitable estoppel.

In a subsequent case, the court again adhered to and upheld the doctrine of equitable estoppel, and specifically indicated the manner in which that doctrine works as far as parties who are strangers to a judgment and are the prevailing party. In Nielson v. Droubay, Utah, 652 P.2d 1293, the court made the following holding:

[2,3] In this jurisdiction we have abandoned the rule requiring mutuality of parties in collateral estoppel cases. The established rule is that a

stranger to a judgment may assert a judgment against one who actually litigated an issue and was necessarily precluded by the judgment and thereby preclude the relitigation of the same issue. Searle Brothers v. Searle, supra, Richards v. Hodson, 26 Utah 2d 113, 485 P.2d 1044 (1971). However, the converse is not true. One who has litigated an issue may not assert a favorable judgment against another who did not have an opportunity to litigate the issue. Ruffinengo v. Miller, Utah, 579 P.2d 342 (1978); State v. Parker, 13 Utah 2d 65, 368 P.2d 585 (1962). Because the Droubays were not parties to the Equitable action, the judgment in that case does not preclude the litigation of their claim that the option was exercised.

See also Schaer v. State, by and through Utah Department of Transportation, Utah, 657 P.2d 1337.

The doctrine of equitable estoppel, as applied in the facts and circumstances before the Court in this matter, would and should not require relitigation. The parties present are bound by the determination made by the trial court.

The trust which was found by the Court to exist can easily be imposed upon the assets in the hands of the Personal Representative of Milton J. Hiltzley; or if the Court considers it necessary to place the assets in a properly appointed Personal Representative for the estate of Etta Wood, such an entity now exists as the record in this appellate proceeding demonstrates.

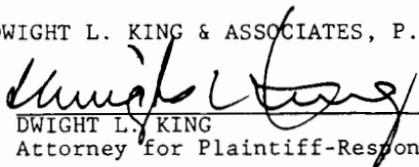
#### CONCLUSION

*Plaintiff* submits that the findings of the trial court are so substantially and clearly supported by the evidence that the findings should be affirmed on this appeal, that such orders

as are necessary to prevent relitigation should be made and fashioned by this Court, that with said modifications the judgment of the trial court should be affirmed and Plaintiff should be awarded her costs herein on this appeal.

RESPECTFULLY SUBMITTED this 18~~th~~ day of October, 1983.

DWIGHT L. KING & ASSOCIATES, P.C.

  
DWIGHT L. KING  
Attorney for Plaintiff-Respondent