

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 : Reply Brief of Appellant

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Recommended Citation

Reply Brief, *Hiltsey v. Ryder*, No. 19145 (1983).
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Clk, Supreme Court, Utah

IN THE SUPREME COURT FOR THE STATE OF UTAH

RUTH S. HILTSLEY, personally,	:	
and RUTH S. HILTSLEY, Adminis-	:	
tratrix of the Estate of Milton	:	
J. Hiltsley, aka M. J. Hiltsley,	:	
	:	
Plaintiff and	:	Case No. 19145
Respondent,	:	
	:	
vs.	:	
	:	
HALLALENE M. RYDER,	:	
	:	
Defendant and	:	
Appellant.	:	

REPLY 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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REPLY BRIEF OF APPELLANT

STATEMENT OF FACTS

The statement of facts in Respondent's Brief is almost entirely argument and should be so considered. Where statements of fact are made, they are often incorrectly made or are misleading as made.

A. There is an absence in the trial court's decision of a finding that Plaintiff-Respondent contributed any funds to the savings accounts or savings certificates in question, contrary to the statement in Respondent's Brief, page 4, (first full

paragraph) referring to the trial court's decision that "It determined that there was a balance of \$9,849.32 which was from the funds of M. J. Hiltsley and Ruth Hiltsley" The trial court's decision, awarding Ruth Hiltsley one-half of that sum was based solely upon the court's determination that the sum was held at one time between M. J. Hiltsley and Ruth Hiltsley as "tenants in common." (R.90, Findings ¶16(1)(d)), and that she had an interest in the account as a tenant in common, not because she had contributed any amount to such account.

REPLY TO RESPONDENT'S BRIEF

Defendant-Appellant replies to such new matters raised by Respondent's Brief as follows:

I. DEFENDANT-APPELLANT HAD NO DUTY TO PROVE THE SOURCE OF THE FUNDS REMAINING IN THE SAVINGS ACCOUNT AND SAVINGS CERTIFICATES LEFT BY THE DECEDENT AT HIS DEATH. Both the Plaintiff and Defendant acknowledged to the trial court that the money market certificates (Ex. 3P & 4P) at Prudential Federal Savings & Loan Association and American Savings & Loan Association were held, at the time of the decedent's death, in the joint names of Milton J. Hiltsley and Hallalene M. Ryder. The evidence presented by the Plaintiff-Respondent to support her claim that she should be entitled to the funds in said accounts was two fold: (1) that the Plaintiff-Respondent had at one time been named in such accounts or certificates as a tenant in common or joint tenant

with Milton J. Hiltsley, and (2) that the Defendant-Appellant had exerted undue influence, perpetrated fraud, or alienated the affections of her husband, Milton J. Hiltsley, causing him to place such accounts or certificates in defendant's name along with his.

In attempting to prove that she at one time had had an interest in the accounts or certificates as a joint tenant or tenant in common with the decedent, the Plaintiff-Respondent introduced evidence tracing the accounts left at the decedent's death to earlier accounts or certificates in her name. Such evidence did not shift the burden of proof required 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." (Emphasis added)

and §75-6-104(1) Utah Code Annotated, 1953, as amended, which states:

"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." (Emphasis added)

As indicated in Appellant's Brief, the trial court found no undue influence, fraud or alienation of affections.

II. THE TRIAL COURT DID NOT HAVE BEFORE IT THE ISSUE OF WHETHER THE DECEDENT, MILTON J. HILTSLEY, HAD MISUSED MONEY RECEIVED FROM HIS SISTER, ETTA WOOD.

Respondent's Brief seems to admit as a fact, that her husband, the decedent, Milton J. Hiltsley, was a "conscious wrongdoer" and that he somehow perpetrated a fraud upon Etta Wood, his sister, or her heirs. Appellant finds no such support for such a position in the decision of the trial court. The willingness of a surviving wife to assert such a position, unsupported by specific findings of the trial court, without such claims being made by the heirs, and without having litigated such issues is difficult indeed to understand. Perhaps her position is based upon the hope that she will eventually inherit all or part of the funds in the savings accounts and certificates through her husband's relationship as an heir of his sister, Etta Wood.

III. THE DOCTRINES OF EQUITABLE ESTOPPEL AND COLLATERAL ESTOPPEL HAVE NO RELEVANCY TO THE ISSUES RAISED ON APPEAL.

Respondent's reference to the doctrine of "equitable" or "collateral" estoppel as it relates to this appeal suggests that Respondent does not understand such doctrines.

Appellant is not attempting, by this appeal, to litigate, or relitigate the issues which were before the trial court.

CONCLUSION

Defendant-Appellant should be granted the relief sought on appeal as set forth in Appellant's Brief heretofore filed.

RESPECTFULLY SUBMITTED this 19th day of November, 1983.

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MAILING CERTIFICATE

This is to certify that two copies of the foregoing Reply to Respondent's Brief were mailed, postage prepaid, to Dwight L. King, KING & PETERSON, 2121 South State #205, Salt Lake City, Utah 84115 this 19th day of November, 1983.

DeLyle H. Condie