

2003

Wood v. Wood : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Andrew B. Berry; attorney for appellant.

Michael K. Black; Young, Kester, Petro; attorney for appellee.

Recommended Citation

Brief of Appellee, *Wood v. Wood*, No. 20030159 (Utah Court of Appeals, 2003).
https://digitalcommons.law.byu.edu/byu_ca2/4725

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

KAREN WOOD,)	
)	
Plaintiff and Appellant,)	
)	
vs.)	Trial Court Judge Bruce K. Halliday
)	
COLLEEN WOOD, individually and as)	Trial Court Case No. 003700013
personal representative of the)	& 010700169
Estate of Raymond D. Wood,)	
)	Appellate No. 20030159-CA
Defendant and Appellee.)	

BRIEF OF APPELLEE

Andrew B. Berry, Jr. (# 0309)
62 West Main Street
P.O. Box 600
Moroni, Utah 84646-0600

Attorney for Appellant

Michael K. Black (#5038)
YOUNG, KESTER & PETRO
75 South 300 West
Provo, Utah 84603

Attorney for Appellee

ORAL ARGUMENT REQUESTED

KAREN WOOD,

VS.

COLLEEN WOOD, individually and as
personal representative of the
Estate of Raymond D. Wood,

Defendant and Appellee.

1

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
JURISDICTIONAL STATEMENT	5
ISSUES PRESENTED AND STANDARD OF REVIEW	5
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	3
STATEMENT OF CASE	7
SUMMARY OF ARGUMENT	17
ARGUMENT	
I. THE COMPETING INTERESTS OF THE PARTIES TO THE REAL PROPERTY IS RESOLVED PURSUANT TO THE DIVORCE PROCEEDINGS	19
II. PAYMENT OF THE MONEY ORDERED PURSUANT TO THE DIVORCE PROCEEDING WOULD RESOLVE ALL CLAIMS AND PROVIDE A CLEAR DEFENSE AGAINST KAREN WOOD’S CLAIMS TO QUIET TITLE.	22
III. THE PROBATE PROCEEDINGS PROVIDED THE APPROPRIATE FORUM FOR KAREN WOOD TO ADJUDICATE HER ENTITLEMENT TO PAYMENT OF MONEY UNDER THE TERMS OF THE DIVORCE PROCEEDINGS.	23
IV. THE RULING BY THE PROBATE COURT THAT KAREN WOOD WAS NOT ENTITLED TO ANY MONEY FROM THE ESTATE OF RAYMOND WOOD PRESENTED A COMPLETE DEFENSE TO KAREN WOOD’S QUIET TITLE ACTION.	26
V. DELIVERY OF THE QUIT CLAIM DEED BY KAREN WOOD TO HER ATTORNEY PRECLUDES HER FROM LATER FILING SURVIVOR	

AFFIDAVIT OR FURTHER CONVEYANCE OF THE SAME PROPERTY. .	27
VI. SUMMARY JUDGEMENT WAS GRANTED BY THE QUIET TITLE COURT NOT BY THE PROBATE COURT.	30
VII. THERE WERE NO AFFIDAVITS SUBMITTED BY THE PERSONAL REPRESENTATIVE IN SUPPORT OF SUMMARY JUDGMENT. THE MATTER WAS DECIDED BASED UPON PRIOR RULINGS IN THE DOMESTIC AND PROBATE PROCEEDINGS.	32
VIII. IN ORDER FOR THE RIGHT OF SURVIVORSHIP TO BE PRESERVED THERE MUST BE A WRITING	32
IX. PERSONAL REPRESENTATIVE SHOULD BE ENTITLED TO HER COLLECT ATTORNEY’S FEES HEREIN.	33
CONCLUSION	34
ADDENDUM	34

TABLE OF AUTHORITIES
CASES

<u>Crowther v. Mower</u> , 876 P.2d 876 (Utah App. 1994)	28
<u>Parker v. Parker</u> , 996 P.2d 565 (Utah Appeals 2000)	7
<u>Pigs Gun Club v. Sanpete County</u> , 43 P.3d 379 (Utah 2002)	5, 6, 7

RULES and STATUTES

Utah Code Annotated §30-3-3	33
Utah Code Annotated §57-1-13	27
Utah Code Annotated §75-2-804	18, 21
75-2-804. Definitions - Revocation of probate and nonprobate transfers by divorce - Effect of severance - Revival - Protection of payors, third parties, and bona fide purchasers - Personal liability of recipient - No revocation by other changes of	

circumstances.

...

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

....

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the Right of survivorship, transforming the interests of the former spouses into tenancies in common.

Utah Code Annotated §78-2a-3(2)(h)	5
Utah Rules of Appellate Procedure 3 and 4	5

JURISDICTIONAL STATEMENT

Jurisdiction is conferred upon this Court by Utah Code Annotated §78-2a-3(2)(h), and by Rules 3 and 4, of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellee asserts that the correct standard of review for the issues presented by the Appellant are as follows:

A. Whether the Trial Court properly concluded that Karen Wood is a creditor of the Estate of Raymond Wood?

Standard of Review. Generally the standard of Review of the Trial Court's granting of summary judgment is based upon a standard of correctness, See Pigs Gun Club v. Sanpete County, 43 P.3d 379 (Utah 2002). In the event the Court determines that Karen Wood was a creditor of the Estate of Raymond Wood, then Judge Halliday's Order denying Karen Wood's creditor claim signed the 10th day of August, 2001, becomes the law of the case inasmuch as there has been no appeal of said decision.

In the event the Court determines that Karen Wood is not a creditor of the Estate of Raymond Wood, then pursuant to the Decree of Divorce filed April 14, 1987 the real property was awarded to Raymond Wood which Decree was not appealed by Karen Wood and becomes the law of the case.

B. Whether the Probate Court was without jurisdiction to determine Karen Wood's Quiet Title claim to her residence and real property?

Standard of Review. Generally the Trial Court's granting of summary judgment is reviewed on the basis of correctness. See Pigs Gun Club v. Sanpete County, 43 P.3d 379 (Utah 2002). However, at the time Judge Halliday entered the Ruling on Summary Judgment both the Probate case and the Quiet Title action had been consolidated and consequently Judge Halliday was presiding as the Judge over the Quiet Title action as well as the Probate action at the time of the ruling on summary judgement.

C. Whether the issue of Karen Wood's interest in her residence and real property was res judicata?

Standard of Review. The Trial Court's granting of summary judgment is reviewed on the basis of correctness. See Pigs Gun Club v. Sanpete County, 43 P.3d 379 (Utah 2002).

D. Whether the Probate Court had jurisdiction to determine the issues in the Quiet Title action?

Standard of Review. It appears that this issue is the same as issue B above.

E. Whether the divorce proceeding severed the joint tenancy and the right of survivorship or specifically preserved the joint tenancy and survivorship to secure the payment of Karen Wood's equity to her?

Standard of Review. Correctness. See Pigs Gun Club v. Sanpete County, 43 P.3d 379 (Utah 2002)

F. Whether there was a disputed issue of material fact precluding the

grant of summary judgment?

Standard of Review. The Appellate Court reviews the Trial Court's granting of summary judgment on the basis of correctness. Pigs Gun Club v. Sanpete County, 43 P.3d 379 (Utah 2002)

G. Whether the Quiet Title action should have been consolidated with the Probate action?

Standard of Review. The standard of review for the Trial Court's granting of the Motion to Consolidate is an abuse of discretion standard. Parker v. Parker, 996 P.2d 565 (Utah Appeals 2000). It should be noted that the Notice of Appeal does not provide notice of Appellant's desire to appeal Judge Bryner's Order consolidating the Probate and Quiet Title action.

STATEMENT OF CASE

Most of the statements made in Appellant's Brief under this same heading are accurate. The following statements, however, Appellee asserts are inaccurately stated.

A. Appellant at page 2 paragraph 4 of her brief states:

The real property remained in joint tenancy following the divorce because Raymond Wood did not pay Karen Wood her equity in the marital property. (R 35-37, 43)

Said statement is a legal conclusion, stated by Appellant, and is the very issue this Court is called upon to decide and for which Colleen Wood personal

representative of Raymond Wood Estate asserts that the divorce proceedings severed the joint tenancy with right of survivorship. The following additional facts are pertinent to the issue.

Paragraph 5 of the Decree of Divorce which splits the personal property reads as follows:

5. That the marital assets be divided between the parties as follows:

A. To Defendant: the 1974 mobile home and the real property located in Orangeville, Emery County, and subject to the indebtedness thereon; the 1984 Daytona automobile, subject to the indebtedness thereon; the 1975 Dodge 4-wheel drive pickup truck; 1978 5th wheel camp trailer; the Century boats; the 1982 Honda ATC 3-wheeler; the dirt bike; the snowmobiles; and a portion of the furniture and furnishings.

B. To Plaintiff: the 1978 Subaru automobile; a portion of the furniture and furnishings; Plaintiff's personal belongings and those of the minor children.

C. That Plaintiff shall and hereby is granted judgment against Defendant in the amount of Ten Thousand Dollars (\$10,000.00), the same being approximately one-half of the equity in those items outlined herein as being awarded to Defendant. Said judgment shall earn interest at the statutory rate until paid in full. (Quiet Title R. 33, Addendum A)

The parties later entered into a subsequent Stipulation, a copy of which is attached as Addendum A. The Stipulation reads in pertinent part as follows:

1. Defendant shall pay to Plaintiff the sum of \$5,600.00 payable \$2,000.00 on or before April 15, 1997 with the balance of \$3,600.00 in monthly payments of \$100.00 the first payment being due on or before April 30, 1997 and like payments being due on or before the end of each month thereafter. Monthly payment shall be made by direct deposit from Defendant's bank account into Plaintiff's account and Defendant shall bear all costs associated with the

arranging of said deposits.

2. As long as the payments herein agreed are timely made, no interest shall accrue on the outstanding balance due. In the event any payment is not timely made; interest at the annual rate of 12% shall computed from the date of this agreement and Plaintiff, upon filing of an affidavit with the Court that payments have not been timely made, shall be entitled to judgment against Defendant for the balance owed, including accrued interest and attorney's fees incurred in the preparation and filing of the Affidavit and judgment. Prior to filing an Affidavit with the Court set forth in this paragraph, Plaintiff shall give to Defendant ten (10) days advance written notice of the delinquency.

3. Upon, the execution of this agreement, Plaintiff shall place with her attorney, Michael A. Harrison, an original, executed Quit Claim Deed to the property awarded to Defendant in the parties' Decree of Divorce, Michael A. Harrison shall deliver the Deed to Defendant upon payment of all sums due hereunder or to a Title Company within the event said Deed is necessary to enable Defendant to refinance his property in order to satisfy his obligations hereunder.

4. Upon the execution of this Stipulation, Defendant's Petition to Modify and Petitioner's Counter Petition, Amended Counter Petition and Order to Show Cause shall be dismissed and a Trial date now scheduled for Friday, February 7, 1997 be vacated.

5. Each party hereby releases the other from any and all obligations that may exist, or may, in the future, exist under the terms of the parties' Decree of Divorce or any subsequent modification thereto. (Quiet Title R. 35-37)

B. At page 2 paragraph 6 of Appellant's Brief, she states:

At the time of his death Raymond Wood had not paid Karen Wood the judgment for her equity in the real property....

Appellant asserts the following pertinent facts relating thereto. Judge Halliday in the probate matter at page 138-139 of the record entered an Order denying

creditor's alleged claim on the 10th day of August, 2001. Pursuant to the Order to deny creditor's alleged claim Judge Halliday ordered:

1. Respondent's Motion for leave to late file a memorandum in opposition is denied due to the fact that Karen Wood has had sufficient time in which to retain an attorney to file an objection to the personal representatives Motion to Deny Creditor's Claim.
2. The time to file an objection has run and Respondent has not filed an objection to the personal representative's motion.
3. The personal representative filed a Notice to All Creditors in the Emery County progress and Ms. Karen Wood did not file a claim as required by Section 75-3-801(1) of UCA.
4. Ms. Karen Wood's alleged claim that the Estate of Raymond D. Wood owes her money is denied.
5. The personal representative is entitled to her attorney's fees.
6. Karen Wood is ordered to have Michael Harris release the Deed of Trust. (Probate R: 114-115)

Karen Wood did not file an appeal of the Court's denial of her Creditors claim. (Probate R: 1-176)

C. Appellant asserts at page 3 paragraph 3 of their Brief as follows:

The probate record has no proof that Notice to Creditors was given or published as required by UCA §75-3-801. R. 1-176.

Appellant asserts the following facts in relation thereto.

The Appellant did not raise the issue as part of the summary judgment and consequently did not preserve that issue for appeal. (Quiet Title R: 1-105)

Judge Halliday in its Order to Deny Creditors alleged claim dated August 10, 2001 specifically states:

3. The personal representative filed a Notice to All

Creditors in the Emery County progress and Ms. Karen Wood did not file a claim as required by Section 75-3-801(1) of UCA. (Probate R: 114-115)

D. At page 6, 6th line from the top, Appellant states as follows:

The Memorandum acknowledged that Raymond Wood had not paid Karen Wood the monies which were a condition precedent to the delivery of the Quit Claim Deed to Raymond Wood from Karen Wood's counsel Michael Harrison. R. 27, in Quiet Title action.

Appellant asserts that the actual language at page 27 of the Record reads as follows:

Although it is unclear whether Raymond Wood paid all of the money he was obligated to pay Karen Wood, (it is clear that the most he would have owed was \$3,600.00) Karen Wood was given the opportunity to present a claim against the Estate of Raymond D. Wood, but rather chose not to make that claim as required by statute. (Quiet Title R:27)

E. At page 7, first paragraph Karen Wood asserts:

Karen Wood executed a Quit Claim Deed which was to be held by her counsel, Michael A. Harrison, for delivery to Raymond Wood upon full payment of Karen Wood's equity in the home and real property in order to "intentionally preserve and protect Karen Wood's interest in the home and real property" R 41-45, 46-65, 65-85.

Appellee asserts the following facts:

The parties entered into a written Stipulation, the complete copy of which is attached is Addendum A (Quiet Title R:35-37). No where in the Stipulation is there a provision providing for Karen Wood to have a continued interest in the home and real property but rather at most a lien against the real property to secure a payment of the amount set out therein. (Quiet Title R:35-37)

The Stipulation specifically provides for the remedy to Karen Wood in the event there is a default in the payment of the monies which is contained in paragraph 2 which reads as follows:

In the event any payment is not timely made, interest at the annual rate of 12% shall be computed from the date of this agreement and Plaintiff, upon filing of an Affidavit with the Court that payments have not been timely made, shall be entitled to judgment against the Defendant for the balance owed including accrued interest and attorney's fees incurred in the preparation and filing of the Affidavit and judgment. Prior to filing an Affidavit with the Court as set forth in this paragraph, Plaintiff shall give to Defendant advance written notice of the delinquency. (Quiet Title R: 35-37)

The Stipulation provided for \$2,000.00 payment paid on or before April 15, 1997 and the balance of \$3,600.00 in monthly payments of \$100.00 beginning April 30, 1997. If all of the payments were timely made, the final payment would have been made on or before March 30, 2000. (Quiet Title R: 35-37) Raymond Wood did not pass away until July 17, 2000 (Probate R: 1) which would have been nearly four months after the scheduled final payment pursuant to the parties' Stipulation.

In addition, the first sentence of paragraph 3 of the stipulation in the Divorce proceedings specifically acknowledges that Raymond Wood was awarded the property in the Decree of Divorce. The pertinent portion of paragraph 3 of the Stipulation reads as follows:

Upon the execution of this Agreement, Plaintiff shall place with her attorney Michael A. Harrison an original executed Quit Claim Deed to the property awarded to the Defendant in the parties' Decree of Divorce. (Emphasis added.) (Quiet Title R: 35-37)

F. Appellant's assertions under the heading "Statement of the Facts" read nearly verbatim to the statements under the heading "Statement of the Case" with the exception of the second to the last paragraph of the Statement of Fact which reads:

The Trial Court in Quiet Title action granted the personal representatives Motion for Consolidation on January 22, 2003, R. 98. On January 22, 2003, the probate court granted the personal representative's Motion for Summary Judgment upon the basis that the decision in the probate matter is res judicata upon the issues raised in Karen Wood's Quiet Title action. The Probate Court ruled that Karen Wood became a creditor of Raymond Wood when she agreed to a sum certain in the divorce action and that "All of her rights, title or interest, in the property were modified from a property interest to a secured creditor's interest." The Probate Court then ruled that Karen Wood "failed to timely perfect a creditor's claim [which] now prevents her from seeking to do indirectly what she was prevented from doing directly." The Probate Court granted the personal representative's Motion for Summary Judgment and dismissed the Quiet Title action of Karen Wood. *R. 100-102.*

The Probate Court was not the Court who entered the ruling on summary judgment. Judge Halliday was sitting as the presiding judge over both the Probate case as well as the Quiet Title action at the time he entered the ruling on summary judgment.

The following portions of the record reflect the status of the Court at the time of the ruling on summary judgment.

Pursuant to an Order on Order to Show Cause entered by Judge Halliday in the probate case on the 29th of October, 2002, it reads in pertinent part:

1. The Court recognizes there is an associated case with Karen Wood wherein Karen Wood has filed a Quiet Title action which bears case number 0107700169 and is set before Judge Bryner.

2. The Court recognizes that Colleen Wood has filed a motion asking Judge Bryner to consolidate the Quiet Title action into this probate action and further has filed a Motion for Summary Judgment.

3. Until Judge Bryner rules on the Motion to Consolidate, this Court will not enter a ruling with regard to the Quiet Title action, but merely will leave the prior rulings of this Court in place until the Motion to Consolidate has been ruled upon by Judge Bryner (probate record 172-173).

On the 19th day of December, 2002, Judge Bryner signed his ruling on the Motion to Consolidate which is contained at Quiet Title record page 98 which reads,

The motion to consolidate the above entitled case with probate no. 00370013EI is granted in order to maintain a consistency. The Motion for Summary Judgment shall be ruled on by the Honorable Bruce K. Halliday of the Seventh District Court who is hearing the said probate case. R. 98.

Judge Halliday in his order of dismissal contained Quiet Title Record at page 100 and 101 states in pertinent part:

“Judge Bryce K. Bryner has ordered this case No. 010700169 hereinafter No. 169, consolidated with probate case No. 00370013, hereafter No. 13, and has requested that the Judge handling the later case, in an attempt to expedite efficient handling of the cases, rule on Defendant’s Motion for Summary Judgment in Case No. 169. The Court has reviewed the pleadings, reviewed the decision which it made in the probate matter, and concludes that the Motion for Summary Judgment on the grounds of the decision in the probate matter was and is res judicata as to the ultimate issues raised in Plaintiff’s Petition to Quiet Title should be granted. I conclude that Case No. 169 is merely an effort on the part of the Plaintiff to circumvent the Order in Case No. 13 and avoid the operation of the statute of limitations question which underlies the decision in the probate matter. To allow such an effort would be a contravention of equity and justice herein. R. 100.

The following is a list of the facts set out in Colleen Wood’s Motion for

Summary Judgment (a complete copy of the motion, memorandum and exhibits are attached as Addendum A) and forms the basis upon which summary judgment was granted.

1. On April 14, 1987, a Decree of Divorce was entered by the Seventh Judicial District Court of Emery County, wherein the Plaintiff Karen Wood, was granted a Decree of Divorce against Raymond D. Wood (now deceased). See attached copy of the Decree of Divorce. (Quiet Title R: 21-22)

2. Pursuant to the Decree of Divorce, paragraph 5A, it reads:

A. To Defendant [Raymond Wood]: The 1974 mobile home and real property located in Orangeville, Emery County, and subject to the indebtedness thereon; the 1984 Daytona automobile, subject to the indebtedness thereon; the Dodge fourwheel drive pick-up truck; the 1978 fifth-wheel camp trailer; the Century boat; the 1982 Honda ATV three-wheeler; the dirt bike; the snowmobile; and a portion of the furniture and furnishings. (Quiet Title R: 21-22)

3. In exchange Karen Wood was awarded, pursuant to the Decree of Divorce, judgment in the amount of \$10,000.00. Paragraph 5C of the Decree of Divorce reads:

C. That Plaintiff [Karen Wood] shall and hereby is granted judgment against defendant in the amount of TEN THOUSAND DOLLARS (\$10,000), the same being approximately one-half of the equity in those items outlined herein as being awarded to Defendant. Said judgment shall earn interest at the statutory rate until paid in full. (Quiet Title R: 21-22)

4. Subsequent to the entry of the Decree of Divorce, issues arose between Karen Wood and Raymond Wood regarding the payment of the judgment entered pursuant to the Decree of Divorce and each of them filed Petitions with the

District Court in the divorce case to have their rights asserted. (Quiet Title R: 21-22)

5. The parties then entered into a Stipulation which resolved the competing petitions to modify. (A copy of the stipulation is attached). Paragraphs 1 and 3 reads:

1. Defendant [Raymond Wood] shall pay to Plaintiff [Karen Wood] the sum of \$5,600.00 payable \$2,000.00 on or before April 15, 1997 with the balance of \$3,600.00 in monthly payments of \$100.00 the first payment being due on or before April 30, 1997 and like payments being due on or before the end of each month thereafter. Monthly payments shall be made by direct deposit from Defendant's bank account into plaintiff's bank account and defendant shall bear all costs associated with the arranging of said deposits.

... 3 Upon, the execution of this agreement, Plaintiff shall place with her attorney, Michael A. Harrison, an original, executed Quit Claim Deed to the property awarded to Defendant in the parties' decree of divorce. Michael A. Harrison shall deliver the deed to Defendant upon payment of all sums due hereunder or to a title company within the event said deed is necessary to enable Defendant to refinance his property in order to satisfy his obligation hereunder. (Quiet Title R: 21-22)

6. Pursuant to paragraph 5 of the Stipulation entered into by the parties in April of 1997, it states:

Each party hereby releases the other from any and all other obligations that may exist or may, in the future, exist under the terms of the parties' Decree of Divorce or any subsequent modification thereto. (Quiet Title R: 21-22)

7. Attached to this Memorandum is a copy of the check made payable to Karen Woods in the amount of \$2,000.00 dated April 15, 1997. (Quiet Title R: 21-22)

8. Raymond Wood and Colleen Wood were married on the 26th day of August, 1998 in Carbon County, Utah. (Quiet Title R: 21-22)

9. On the 17th day of July 2000, Raymond Wood passed away. (See probate # 003700013 EI) (Quiet Title R: 21-22)

10. Upon the death of Raymond Wood, the Defendant herein, Colleen Wood, the surviving spouse, was appointed the personal representative of the Estate of Raymond Wood. (See attached Order). (Quiet Title R: 21-22)

11. A Notice to All Creditors was published in the Emery County Progress as provided in Section 75-3-801(1) of the Utah Code. (See probate # 003700013 EI) (Quiet Title R: 21-22)

12. Karen Wood failed to file Notice of Claim against the estate of Raymond Wood. (See probate # 003700013 EI) (Quiet Title R: 21-22)

13. Colleen Wood then filed a Motion to Deny Creditor's Claim and served notice of the motion on Karen Wood. (See probate # 003700013 EI) (Quiet Title R: 21-22)

14. Judge Halliday ruled on the motion on the 10th of August 2001. Judge Halliday ordered that Karen Wood's claim be denied and ordered that the deed be recorded. (See attached Order) (Quiet Title R: 21-22)

15. No appeal of the decision was filed. (See probate # 003700013 EI) (Quiet Title R: 21-22)

16. The Plaintiff Karen Wood was aware of her right to appeal the adverse

ruling of the probate court and consciously decided not to pursue the appeal. A copy of a letter is attached hereto wherein Karen Wood acknowledges the time limitations on the filing of an appeal. See attached letter dated September, 7, 2001 addressed to David and McKette Allred. (Quiet Title R: 21-22)

SUMMARY OF ARGUMENT

Karen Wood and Raymond Wood were divorced pursuant to a Decree of Divorce entered by the District Court on the 9th day of April, 1987. The District Court granted to Raymond Wood the real property located in Orangeville, Emery County, State of Utah which was the only real property which the parties owned. In addition, the Trial Court granted to each of the parties certain items of personal property and then granted a judgment to Karen Wood (Appellant) of \$10,000.00 to equalize the equities in the real and personal property awarded to each of the parties.

Utah Code Annotated Section 75-2-804 specifically severs the interest of a spouse in property held at the time of divorce or annulment as joint tenants with right of survivorship.

After Raymond Wood's death, Karen Wood failed to make any claim against the Estate of Raymond Wood in the probate proceedings until after the personal representative filed a motion to deny creditor's claims. Judge Halliday entered an order in August of 2001 ordering that Karen Wood was not entitled to any claims against the Estate of Raymond Wood.

The ruling in the probate case went unappealed by Karen Wood. The Decree

of Divorce entered by the divorce court in 1987 went unappealed by Karen Wood.

The award of real property to Raymond Wood in the divorce action and the denial of any claim for reimbursement of money to Karen Wood in the probate case now precludes Karen Wood from relief in her Quiet Title action wherein Karen Wood seeks the Order of the Court that a right of survivorship was in effect and that she should be awarded all interest in the real property.

ARGUMENT

POINT I

THE COMPETING INTERESTS OF THE PARTIES TO THE REAL PROPERTY IS RESOLVED PURSUANT TO THE DIVORCE PROCEEDINGS.

Raymond Wood and Karen Wood were divorced pursuant to a Decree of Divorce signed the 9th day of April, 1987. A complete copy of the Decree of Divorce is attached in Addendum A.

Paragraph 5 of the Decree of Divorce is the division of the marital assets and reads as follows:

5. That the marital assets be divided between the parties as follows:

A. To Defendant: the 1974 mobile home and the real property located in Orangeville, Emery County, and subject to the indebtedness thereon; the 1984 Daytona automobile, subject to the indebtedness thereon; the 1975 Dodge 4-wheel drive pickup truck; 1978 5th wheel camp trailer; the Century boats; the 1982 Honda ATC 3-wheeler; the dirt bike; the snowmobiles; and a portion of the furniture and furnishings.

B. To Plaintiff: the 1978 Subaru automobile; a portion

of the furniture and furnishings; Plaintiff's personal belongings and those of the minor children.

C. That Plaintiff shall and hereby is granted judgment against Defendant in the amount of Ten Thousand Dollars (\$10,000.00), the same being approximately one-half of the equity in those items outlined herein as being awarded to Defendant. Said judgment shall earn interest at the statutory rate until paid in full.

The only real property referred to in the Decree of Divorce is the real property located in Orangeville, Emery County and is the real property at issue in this Appeal.

The parties later filed Counter Petitions in the Divorce action to modify which resulted in a Stipulation signed by the parties and filed in the divorce action on April 28, 1997. The Stipulation is 5 paragraphs long. A copy of the Stipulation is attached as Addendum A. The 5 paragraphs read as follows:

1. Defendant shall pay to Plaintiff the sum of \$5,600.00 payable \$2,000.00 on or before April 15, 1997 with the balance of \$3,600.00 in monthly payments of \$100.00 the first payment being due on or before April 30, 1997 and like payments being due on or before the end of each month thereafter. Monthly payment shall be made by direct deposit from Defendant's bank account into Plaintiff's account and Defendant shall bear all costs associated with the arranging of said deposits.

2. As long as the payments herein agreed are timely made, no interest shall accrue on the outstanding balance due. In the event any payment is not timely made; interest at the annual rate of 12% shall computed from the date of this agreement and Plaintiff, upon filing of an affidavit with the Court that payments have not been timely made, shall be entitled to judgment against Defendant for the balance owed, including accrued interest and attorney's fees incurred in the preparation and filing of the Affidavit and judgment. Prior to filing an Affidavit with the Court set forth in this paragraph, Plaintiff shall give

to Defendant ten (10) days advance written notice of the delinquency.

3. Upon, the execution of this agreement, Plaintiff shall place with her attorney, Michael A. Harrison, an original, executed Quit Claim Deed to the property awarded to Defendant in the parties' Decree of Divorce, Michael A. Harrison shall deliver the Deed to Defendant upon payment of all sums due hereunder or to a Title Company within the event said Deed is necessary to enable Defendant to refinance his property in order to satisfy his obligations hereunder.

4. Upon the execution of this Stipulation, Defendant's Petition to Modify and Petitioner's Counter Petition, Amended Counter Petition and Order to Show Cause shall be dismissed and a Trial date now scheduled for Friday, February 7, 1997 be vacated.

5. Each party hereby releases the other from any and all obligations that may exist, or may, in the future, exist under the terms of the parties' Decree of Divorce or any subsequent modification thereto.

This Court is called upon to interpret the Decree of Divorce and subsequent Stipulation as set out above but no where in the language is there any reference to a Right of survivorship in the property being preserved.

Utah Code Annotated §75-2-804 entitled Definition reads as follows:

75-2-804. Definitions - Revocation of probate and nonprobate transfers by divorce - Effect of severance - Revival - Protection of payors, third parties, and bona fide purchasers - Personal liability of recipient - No revocation by other changes of circumstances.

...

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

....

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the Right of survivorship, transforming the interests of the former spouses into tenancies in common.

The statutory provisions set out above specifically severs Karen Wood's right to the property unless there is an express term of a governing instrument, a Court order or a contract providing for a Right of survivorship. No where in the language in the Decree of Divorce or Stipulation of the parties is there an express provision providing for a Right of survivorship of Karen Wood in the property at issue, nor has Karen Wood made claim in her opposition to summary judgment or in her brief that there exists such a written document.

POINT II

PAYMENT OF THE MONEY ORDERED PURSUANT TO THE DIVORCE PROCEEDING WOULD RESOLVE ALL CLAIMS AND PROVIDE A CLEAR DEFENSE AGAINST KAREN WOOD'S CLAIMS TO QUIET TITLE.

The Decree of Divorce nor the subsequent Stipulation contemplated that Karen Wood would be entitled to be paid the judgment and in addition be entitled to ownership in the real property. The Stipulation attached in Addendum A provides that upon payment of the money as agreed in the Stipulation that Raymond Wood would be entitled to force Michael Harrison to turn over the Quit Claim Deed held in his possession. The judicial determination of whether Raymond Wood owed

Karen Wood any money pursuant to the parties' Stipulation was adjudicated in the Probate Court. The Probate Court determined that Raymond Wood did not owe any money to Karen Wood. (Probate R:114-115)

The Quiet Title action filed by Karen Wood is not a Quiet Title action where you have competing claims because of discrepancy in property description; or claims based upon adverse possession or boundary by acquiescence. The position taken by Karen Wood is that she claims that she was not paid the money owed pursuant to the parties' Stipulation and therefore mistakenly believes she is entitled to the windfall of complete ownership in the property.

POINT III

THE PROBATE PROCEEDINGS PROVIDED THE APPROPRIATE FORUM FOR KAREN WOOD TO ADJUDICATE HER ENTITLEMENT TO PAYMENT OF MONEY UNDER THE TERMS OF THE DIVORCE PROCEEDINGS.

Raymond Wood died on the 17th day of July, 2000. (Probate R: 01) Prior to Raymond Wood's death, Karen Wood might have sought the help and assistance of the divorce court had she believed that there was a claim for nonpayment of the monies owed. Karen Wood's remedies for nonpayment of the amounts agreed upon pursuant to the parties' Stipulation are quite clearly outlined in paragraph 2 of the Stipulation attached in Addendum A which reads, in pertinent part:

In the event any payment is not timely made, interest at the

annual rate of 12% shall be computed from the date of this agreement and Plaintiff, upon filing of an Affidavit with the Court that payments have not been timely made, shall be entitled to judgment against the Defendant for the balance owed including accrued interest and attorney's fees incurred in the preparation and filing of the Affidavit and judgment. Prior to filing an Affidavit with the Court as set forth in this paragraph, Plaintiff shall give to Defendant advance written notice of the delinquency.

The Stipulation provided for \$2,000.00 to be paid on or before April 15, 1997 and the balance of \$3,600.00 in monthly payments of \$100.00 beginning April 30, 1997. If all of the payments were timely made, the final payment would have been made on or before March 30, 2000. Raymond Wood did not pass away until July 17, 2000 which would have been nearly four months after the scheduled final payment pursuant to the parties' Stipulation.

During said nearly four month period of time, Karen Wood did not send written notice of any delinquency (or at least has not made any attempt to assert in any of the proceedings that she had sent any notice to Raymond Wood of a delinquency) nor did she return to the District Court in the divorce proceedings to make any attempt to obtain a judgment as allowed pursuant to their Stipulation.

Once Raymond Wood passed away, the appropriate forum for Karen Wood to assert any claims that she had for payment of money would fall within the jurisdiction of the Probate Court, yet again Karen Wood did not make any attempt to file a claim or assert a claim that any monies were still owed to her pursuant to the parties' Stipulation. There was no effort on the part of Karen Wood to assert her

claims for payment of money until after the filing of the Personal Representatives motion to Deny Creditors Claim.

The Probate Court determined that Karen Wood had not timely filed her creditor's claim and therefore denied any claims for money owed by the Estate of Raymond Wood. The Order denying Karen Wood's claim went unappealed and has been in place since the 10th day of August, 2001. (Probate R:114-115)

Had Karen Wood timely asserted her claims in the divorce proceedings prior to Raymond Wood's death or even in a timely manner after Raymond Wood's death pursuant to a creditor's claim, then the Court could have received evidence from Karen Wood as to payments that had been made or payments that had not been made but because of her untimeliness the Court has denied her right to seek any claims against Raymond Wood's Estate which carries the same result as if the Court had made a finding that all payments had been made pursuant to the parties' Stipulation. It becomes even more apparent that the District Court reached the appropriate results in light of the following example. If one assumes that Karen Wood had timely asserted her claims either in the divorce proceedings or in the probate proceedings and the Court for purposes of example determined that \$500.00 had not been paid pursuant to the parties' Stipulation, then an appropriate judgment would have been entered and either Raymond Wood or his Estate would have paid the \$500.00 or Karen Wood would have been entitled to execute on the property of the Estate for which she may or may not have chosen to foreclose on the real property.

In the event, the Court allowed a foreclosure, any amounts above the amount owed to Karen Wood would have been paid back to the Estate of Raymond Wood.

POINT IV

THE RULING BY THE PROBATE COURT THAT KAREN WOOD WAS NOT ENTITLED TO ANY MONEY FROM THE ESTATE OF RAYMOND WOOD PRESENTED A COMPLETE DEFENSE TO KAREN WOOD'S QUIET TITLE ACTION.

The denial of Karen Wood's claims against the Estate of Raymond Wood has the same effect as an adjudication by the Probate Court that all monies owed pursuant to the divorce stipulation had been paid by Raymond Wood. Karen Wood asserts as part of her Quiet Title action that inasmuch as she claims that she was not paid the money owed to her, that she is entitled to maintain a Right of survivorship in the property. It becomes, perhaps even more apparent, that had Karen Wood asserted her claims in the divorce proceedings prior to Raymond Wood's death and had the divorce court determine that \$5,600.00 as set out in the parties' Stipulation had been paid to Karen Wood there would be little question as to the resolution in the Quiet Title action. The divorce court clearly would have had the ability to determine that all payments had been made to Karen Wood and that she was not entitled to claims against any of the marital property of Raymond Wood. Because the probate Court was the forum to determine whether payments had been made or not does not change the end result that any claims that Karen Wood has to the real property are a function of whether she was entitled to any money under the parties'

Stipulation. Because the Probate Court determined that Karen Wood was not entitled to any money from the Estate of Raymond Wood the ruling in the Probate Court is res judicata and precludes recovery by Karen Wood in a Quiet Title action. (See argument as set out in the original Motion for Summary Judgment attached in Addendum A for a more expanded discussion regarding the res judicata effect of the rulings in the divorce and probate actions.)

POINT V

DELIVERY OF THE QUIT CLAIM DEED BY KAREN WOOD TO HER ATTORNEY PRECLUDES HER FROM LATER FILING A SURVIVOR AFFIDAVIT OR FURTHER CONVEYANCE OF THE SAME PROPERTY.

Even if the Court were to reach the conclusion that the Decree of Divorce did not sever the Right of survivorship to Karen Wood then the subsequent Stipulation in the divorce proceedings entered into on the 25th day of April, 1997 with the accompanying transfer of an original Quit Claim Deed signed by Karen Wood to her attorney Michael Harrison would have severed any right of survivorship.

Utah Code Annotated §57-1-13 states in pertinent part:

A Quit Claim Deed, when executed as required by law, shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein prescribed and all right, privileges, and appurtenances thereto belonging, at the date of the conveyance.

Pursuant to the parties' Stipulation, Karen Wood signed a Quit Claim Deed

for the property at issue and delivered the Deed to Michael A. Harrison her attorney. Mr. Harrison, pursuant to the Stipulation was instructed to deliver the Deed to Defendant upon payment of all sums due or to enable Mr. Wood to refinance his property in order to satisfy his obligations pursuant to the Stipulation. The exact language of the Stipulation is contained in paragraph 3 and cited verbatim in the Statement of Facts herein. The delivery of the Quit Claim Deed to her attorney Michael Harrison constituted a valid delivery of the Deed and precludes Karen Wood from any further transfer including the filing of a Right of survivorship to the property. The act of signing the Quit Claim Deed and delivering it to Michael Harrison to hold pending payment of the monies agreed in the Stipulation specifically in itself severs any Right of survivorship. The Utah Court of Appeals in Crowther v. Mower, 876 P.2d 876 (Utah App. 1994) ruled:

I. Dissolution of Joint Tenancy

When a joint tenant makes "a bona fide conveyance of his interest in property to a third party, . . . this has the effect of terminating the joint tenancy, and converting the ownership into a tenancy in common." Nelson v. Davis, 592 P.2d 594, 596 (Utah 1979); accord Clearfield State Bank v. Contos, 562 P.2d 622, 624-25 (Utah 1977); Tracy-Collins Trust Co. v. Goeltz, 5 Utah 2d 350, 301 P.2d 1086, 1090 (Utah 1956) (joint tenant who conveys or mortgages real property terminates joint tenancy and creates tenancy in common).

"Either party to a joint tenancy may terminate it . . . and . . . the consent of the other tenants to the severance or termination is not required." 48A C.J.S. Joint Tenancy § 16 at 343 (1981); accord Nelson, 592 P.2d at 596, 597; Clearfield State Bank, 562 P.2d at 624-25.

The valid conveyance itself destroys the joint tenancy, and a joint tenant need not notify the other tenant or record the conveyance.

See Burke v. Stevens, 264 Cal. App. 2d 30, 70 Cal. Rptr. 87, 90-91 (Cal. App. 1968) ("It was unnecessary in connection with the execution of such a deed that there should be notification to the other joint tenant and unnecessary that the deed be recorded; neither acknowledgment {876 P.2d 879} or recordation is necessary."); 48A C.J.S. Joint Tenancy § 17 at 345.

"Survivorship is the distinctive characteristic or major incident of an estate in joint tenancy." 48A C.J.S. Joint Tenancy § 3 at 302. However, survivorship is an expectancy and not a future interest because a joint tenant has but a "conditional opportunity of becoming the owner of the whole interest." Estate of Breckon v. Tax Comm'n, 591 P.2d 442, 443 (Utah 1979).

"The effect of a severance by a joint tenant is to terminate the incident of survivorship as between him and the other joint tenants." 48A C.J.S. Joint Tenancy § 19 at 351 (citing Tracy-Collins, 301 P.2d at 1090); accord 20 Am. Jur. 2d Cotenancy and Joint Ownership §§ 14 & 16 at 108, 109 (1965).

Accordingly, Mrs. Crowther had no interest in the Property at the time of her death, having transferred her interest to Mower, and Crowther's ownership interest had already changed from a joint tenancy to a tenancy in common.

II. Effect of Failure to Record

Crowther argues that Mrs. Crowther did not convey her interest because Mower failed to record the deed prior to her death, or alternatively, that Mrs. Crowther did not intend to transfer her interest. We disagree.

A quit claim deed, "when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance." Utah Code Ann. § 57-1-13 (1994). The fact that such a deed is not recorded or that recording is delayed "does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document." Utah Code Ann. § 57-3-2(3). In fact, Utah's recording laws "do not make recordation a prerequisite to the validity of a deed." Gregerson v. Jensen, 669 P.2d 396, 398 (Utah 1983) (unrecorded deed valid against interest of subsequent buyers who failed to record their own interest); Tarpey v. Deseret Salt Co., 5 Utah 205, 14 P. 338, 339 (Utah 1887) (unrecorded conveyance valid between parties and to all parties having actual notice), aff'd, 142 U.S. 241, 12 S. Ct. 158, 35 L. Ed. 999

(1891). Nor is compliance with the recording statute necessarily a prerequisite to enforcing the terms of the deed. Larson v. Overland Thrift & Loan, 818 P.2d 1316, 1323 (Utah App. 1991); cert. denied, 832 P.2d 476 (Utah 1992).

POINT VI

SUMMARY JUDGEMENT WAS GRANTED BY THE QUIET TITLE COURT NOT BY THE PROBATE COURT.

Karen Wood asserts that the District Court committed error because the Probate Court should not enter a ruling in a Quiet Title action. Karen Wood misconstrues the procedural status of the files at the time of the entry of the Ruling on Summary Judgment. The probate case which is Case No. 003700013 EI was originally presided over by Judge Halliday. The Quiet Title action which bears Civil No. 0107700169 was originally assigned to Judge Bryner. The Motion to Consolidate the cases and for Summary Judgment were filed in the Quiet Title action Civil No. 010700169 seeking to consolidate the Quiet Title action into the previously filed probate case before Judge Halliday.

In fact, pursuant to the Order on Order to Show Cause at record 172-173, Judge Halliday makes the following Order on Order to Show Cause which reads in pertinent part:

1. The Court recognizes that there is an associated case wherein Karen Wood has filed a Quiet Title action which bears case no 0107700169 and is set before Judge Bryner.
2. The Court recognizes that Colleen Wood Davis has filed a motion asking Judge Bryner to consolidate the Quiet Title action into this probate action and further has filed a motion for summary judgment.

3. Until Judge Bryner rules on the Motion to Consolidate, this Court will not enter a ruling with regard to the Quiet Title action, but merely will leave the prior rulings of this Court in place until the Motion to Consolidate has been ruled upon by Judge Bryner.

The Order on Order to Show Cause was signed by Judge Halliday on the 29th day of October, 2002. The principle Memorandum in support of the Motion to Consolidate and for Summary Judgment as well as Karen Wood's Memorandum in opposition and the Reply Memorandum were all filed in the Quiet Title action. Judge Bryner then ruled on the Motion to Consolidate which ruling is set out on page 98 of the record wherein Judge Bryner rules as follows:

The Motion to Consolidate the above entitled case with Probate No. 003700013EI was granted in order to maintain consistency. The Motion for Summary Judgment shall be ruled on by the Honorable Bruce K. Halliday, Judge of the Seventh District Court, who is hearing the said probate case.

Subsequent thereto, on the 22nd of January, 2003, Judge Bruce K. Halliday entered his ruling on the Motion for Summary Judgment as set out in the Order of Dismissal contained at record page 100-101.

The claim by Karen Wood that the Probate Court was without jurisdiction to determine Karen Wood's claim to real property is mistaken. At the time that Judge Halliday ruled on the Motion for Summary Judgment, he was sitting as the judge not only in the probate case but also in the Quiet Title action inasmuch as both matters had been consolidated and assigned to Judge Halliday for consideration.

POINT VII

THERE WERE NO AFFIDAVITS SUBMITTED BY THE PERSONAL REPRESENTATIVE IN SUPPORT OF SUMMARY JUDGMENT. THE MATTER WAS DECIDED BASED UPON PRIOR RULINGS IN THE DOMESTIC AND PROBATE PROCEEDINGS.

Karen Wood asserts in her Brief that the Affidavits of the personal representative should not be considered in that she believes they are defective because they are not made upon personal knowledge.

The Quiet Title action contains all of the memorandums submitted by the personal representative in support of the Motion for Consolidation and for Summary Judgment. The Court can review the record which will show that there were no affidavits of the personal representative Colleen Wood submitted in support of the Motions for Summary Judgment. The basis for the Summary Judgment was based upon the record in the divorce proceedings as to the parties' Stipulation and the record in the Probate matter denying the creditor's claim of Karen Wood.

POINT VIII

IN ORDER FOR THE RIGHT OF SURVIVORSHIP TO BE PRESERVED THERE MUST BE A WRITING.

The final argument made by Karen Wood in her brief asserts that regardless of the language in the Stipulation in the divorce proceedings, it was the parties intent to leave the Right of survivorship in place. The clear language of the written documents leads one to the opposite conclusion as set out in the ruling by Judge

Halliday. The statute cited in Point I requires a written document which outlines the parties intent to maintain a right of survivorship and that in the absence of such a writing that there can be no right of survivorship preserved. The Appellate Court can reach its own conclusions based upon the reading of the Decree of Divorce and Stipulation of the parties. The clear language of the Divorce Decree and Stipulation do not make any provision for a right of survivorship and therefore the District Court acted properly in granting summary judgment.

POINT IX

THE PERSONAL REPRESENTATIVE SHOULD BE ENTITLED TO COLLECT HER ATTORNEY'S FEES HEREIN.

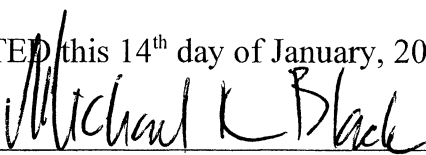
Pursuant to the Court's Order denying creditor's claim in the probate matter, paragraph 5 (R. 115) the personal representative was awarded her attorney's fees. The personal representative asked the Court as part of the Motion for Summary Judgment for an award of attorney's fees. Judge Halliday did not address the issue in his Order granting summary judgment.

The substance of this appeal is a request on the part of Karen Wood to interpret the Orders in the divorce proceedings with regard to her right to survivorship in the marital real property. Pursuant to Utah Code Annotated §30-3-3, the Court has the ability in domestic cases to order the payment of attorney's fees and the personal representative requests that the Court awarded the Estate its fee.

CONCLUSION

Appellee respectfully requests this Court to confirm the decision of Judge Halliday in granting summary judgment and requests that the Court of Appeals award the personal representative or the Estate of Raymond Wood her costs and attorney's fees herein.

RESPECTFULLY SUBMITTED this 14th day of January, 2004.

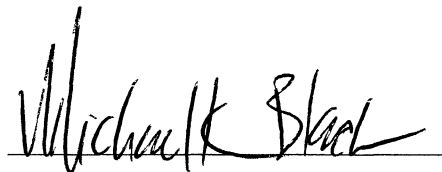


MICHAEL K. BLACK
Attorney for Defendant and Appellee

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of January, 2004, I mailed a true and correct copy of the foregoing to the following:

Andrew B. Berry, Jr., Esq.
62 West Main Street
P.O. Box 600
Moroni, Utah 84646-0600



ADDENDUM

- A. Personal Representatives Memorandum in support of Summary Judgment
- B. Karen Woods Memorandum of Points and Authorities in Opposition
- C. Personal Representative Reply Memorandum