

1969

James Orville Woodward, Glen Woodward, Thelma Dalton and Joyce Dickason v. Bessie Monson : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

JAMES ORVILLE WOODWARD,
GLEN WOODWARD, THELMA
DALTON and JOYCE DICKASON,

Plaintiffs-Respondents,

vs.

BESSIE MONSON,

Defendant-Appellant.

Case No.
11593

BRIEF OF APPELLANT

Appeal From The Judgment Of The
Second District Court For Weber County
The Honorable John F. Wahlquist, Judge

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Defendant-Appellant.

Case No.
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BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

Appellant and respondents are children of one James Leon Woodward. After the decease of James Leon Woodward, respondents filed suit against appellant seeking the Court to impose a constructive trust on the proceeds of a bank account held in the names of appellant and her father as joint tenants. Respondents further sought distribution of said proceeds on a per capita basis.

DISPOSITION IN LOWER COURT

At the pre-trial hearing the Court ruled that appellant had the burden of going forth with the evidence and that appellant had the burden of proving all of the elements of a gift of the proceeds of the joint bank account by clear and convincing evidence. Appellant objected to this ruling at the pre-trial hearing and also immediately prior to the trial in this matter.

The case was tried without a jury before the Honorable John F. Wahlquist on January 15, 1969. At said trial appellant carried the burden of going forth with the evidence and the burden of proof on the issue of whether or not there had been a gift to appellant by her father of the proceeds of the joint bank account. The Court ruled that there was no gift or transfer of the proceeds in the joint bank account to appellant and that the decedent intended to make a testamentary disposition of the funds. The issue of whether or not there was a constructive trust was never tried before the Court.

The Court entered judgment in favor of respondents after adjustment for expenses of last illness, burial, and other disbursements. Appellant filed a motion for a new trial which was denied by the Court and the subject appeal was filed.

RELIEF SOUGHT ON APPEAL

Appellant submits that the trial court committed serious and prejudicial error at the time of trial and

that the procedure used by the trial court together with the evidence require reversal of the judgment as a matter of law.

STATEMENT OF FACTS

Appellant and respondents are the surviving children of James Leon Woodward, who died intestate on August 31, 1964, in Ogden, Utah. Prior to his death, Mr. Woodward owned a small farm near Preston, Idaho. In 1942 Mr. Woodward was divorced from his wife and was a single man at the time of his death. During the years immediately preceding his death, it was Mr. Woodward's custom to spend the wintertime and weekends during the summertime in an apartment in Ogden, Utah, and the balance of the year at his farm near Preston, Idaho (T-14). During his stay in Ogden it was his custom to visit appellant two or three times a week (T-24). In addition to these visits and eating meals at appellant's, appellant took the decedent to Salt Lake City for cobalt treatments in connection with his cancer condition and he later stayed at appellant's house until taken to the hospital where he died (T-24, 25, 63, & 64). In contrast, respondents seldom, if ever, visited their father either in Preston or in Ogden. Respondent James Orville Woodward was not aware of his father's address in Ogden, didn't see him in the hospital prior to his death, and didn't attend his viewing nor his funeral (T-139, 143 & 144). Respondent Glen Woodward saw his father

only twice in the year of his father's death and his father had been only once in his son's house in Salt Lake City from 1958 to the time of his death in 1964 (T-117 & 120). Respondent Thelma Dalton had directed her father not to come to her house and visit her any more, took sides with her mother against her father after the divorce, refused to visit him at his farm in Preston because she considered the living conditions crude, did not visit him in the hospital during his last illness and did not attend his viewing or his funeral (T-36, 84, 90, 91, 93, 94 & 95). Respondent Joyce Dickason lived in California and Maryland during the last years of her father's life and had very little contact with him, did not see him during his last illness, did not attend his viewing nor his funeral (T-8, 40, 111, & 112).

In the summer of 1963 the decedent came to Ogden and had appellant sign a bank card creating a joint tenancy savings account in the First Security Bank of Preston, Idaho, in the names of appellant and the deceased (T-74). The proceeds represented moneys received from a sale of part of the farm land (T-55 & 56).

After the decease of Mr. Woodward, appellant had the proceeds of the joint savings account in the sum of \$12,500.00 transferred to the Bank of Ben Lomond in Ogden, Utah, and retained the proceeds as her own after paying her father's expenses of last illness and burial expenses and after giving her mother

\$1,000.00 and each of the respondents \$1,000.00 with the exception of respondent James Orville Woodward (T- 59 & 78). The house and remaining farm land were probated in Idaho and appellant and respondents received equal distributive shares (T-60).

Respondents made no claim in the probate for a share of the proceeds of the joint bank account but later filed suit in Utah under the theory of a constructive trust (T-59, 60 & R-1). At the pre-trial hearing the Court ruled that appellant would have the burden of going forth with the evidence and establishing all the elements of a gift of the bank account by clear and convincing evidence (R-17). Appellant objected to this both at the pre-trial hearing and by motion on the morning of the trial arguing that the burden was upon respondents to establish a constructive trust and to carry the burden of going forth with the evidence (T-2 & 6). After a trial before the Court sitting without a jury, the Court found that there was no gift of the bank proceeds to appellant and entered judgment in favor of respondents (R-34 & 39).

ARGUMENT

POINT I

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN COMPELLING APPELLANT TO CARRY THE BURDEN OF GOING FORTH WITH THE EVIDENCE AND

IN TRYING THE CASE ON THE ISSUE OF GIFT RATHER THAN ON THE ISSUE OF CONSTRUCTIVE TRUST.

Respondents' complaint pleads a cause of action based on a constructive trust theory as described in paragraph 6 of the complaint, i. e., "A constructive trust should be declared with respect to the funds held by said Bessie Monson from said joint account . . . " (R-2). At the pre-trial hearing, the court ruled that the decedent was a resident of Idaho and that Idaho law was controlling (R-15). The trial court relied on the case of *Idaho First National Bank vs. First National Bank of Caldwell, et al.*, 340 P.2d 1094 (Idaho 1959), which involved an action by an administrator to recover for the decedent's estate certain funds deposited in a joint account of the decedent and defendants. The Idaho Court held that defendants were required, once the question of intent of the decedent was raised, to assume the burden of proof and to establish by clear and convincing evidence all the elements of an inter vivos gift.

The Utah trial court in the instant case followed Idaho's substantive law and procedural law as well. It is appellant's contention that when the trial court compelled appellant to carry the burden of going forth with the evidence it committed prejudicial error in failing to follow Utah procedural law or the law of the forum.

The Restatement Of The Law of Conflicts Of

Laws, §592, provides that the law of the forum governs all matters of pleading and the conduct of proceedings in court. And further, §595 provides that the law of the forum governs the proof in court of a fact alleged as well as the presumptions and inferences to be drawn from the evidence. And more particularly in Comment a. the following is found:

“Proof in court covers all matters falling within the description ‘burden of proof’. This includes what is sufficient evidence on an issue of fact to entitle the jury to consider it. It includes the burden of going forward with the evidence; also the question of which party bears the risk of non-persuasion of the trier of the fact.”

In agreement to the foregoing is 16 Am Jur 2d §76, p. 120, which provides as follows:

“In matters of procedure, or, as sometimes stated, in matters of remedial rights, it is clearly settled that every case must be governed by the law of the place where the remedy is sought. This rule applies in general to all matters of pleading, including the sufficiency of pleadings, or whether a cause of action is stated in a pleading, and the rules of pleading, to rules of evidence and rules of practice; to matters pertaining to modes of procedure and form of remedy, including what form of action is proper and whether the action must be at law or in equity; . . .”.

In 168 ALR 191, the following is found:

“As stated in the original annotation, questions of evidence, as for instance its admissi-

bility, sufficiency, etc., are regarded as purely questions of remedy to be governed by the law of the forum, and the question of the presumption and burden of proof is, at least by the weight of authority, ordinarily regarded as subject to the same rule; and, as a general rule, as between conflicting rules as to presumption and burden of proof prevailing at the situs of the transaction and in the forum, that of the latter jurisdiction has been accorded precedence, the rule of the former being rejected as merely relating to the remedy and being of no extraterritorial force."

The Utah Court followed the general rule in the case of *Buhler v. Maddison*, 166 P.2d 205 (1946), which involved a workmen's compensation claim wherein the injury occurred in Nevada and the trial was had in Utah. At page 209 of the opinion, the Utah court indicated as follows:

"This action is prosecuted in the courts of Utah upon a cause of action arising in Nevada. The merits of the controversy, the elements of the cause of action, the substantive rights are determined by the law of Nevada; the trial of the action, the procedural matters including the making of proof and rules of evidence are controlled by the law of Utah."

It is appellant's further contention that the substantive law of Utah should have been controlling in this case upon the grounds that the joint tenancy bank account was a three party contract between the decedent, appellant and the First Security Bank of Preston, Idaho. It is uncontested that appellant signed

the bank signature card in Ogden, Utah, approximately one year prior to decedent's death (T-56, 57 & 74). This was the last act necessary for the validity of the three party contract.

In 16 Am Jur 2d §39, p .58, the following is found:

“It is a familiar rule that the construction and validity of a contract are governed by the law of the place where it is made.”

In this connection see the Utah case of *Kansas City Wholesale Grocery Co. v. Weber Packing Corporation*, 73 P.2d 1272 (1937), wherein the following is found at page 1274:

“A contract between parties in different states is made at the place where the last act necessary to give it validity is performed.”

It seems clear that Utah's substantive law should have been followed by the trial court as well as Utah procedural law upon the grounds that the agreement was finalized in Utah.

If the trial court had followed Utah's substantive or procedural law, or both, the result would have been in favor of appellant. Utah has no counterpart of Idaho law as set forth in the case of *Idaho First National Bank v. First National Bank of Caldwell, et al.*, as previously cited. The Idaho precedent, as set forth in this case, is both dangerous and a catalyst for litigation. The following is found in the dissenting opinion at page 1100:

“ . . . the effect of the decision of the majority is to create further uncertainty as to the effect of joint and survivorship bank accounts on the death of an owner-depositor.”

And further at page 1101:

“It appears to us that the ruling of the majority in this case will nullify the Gray case, and is tantamount to holding that the creation of a joint account, with the right of survivorship, in the matter selected by the decedent is without force or effect. The majority rule would permit such an act to be challenged in virtually every instance; the anomaly is born that the survivor must prove the decedent did precisely what he unequivocally stated in writing that he did. The bank card, or joint account agreement, states that the funds deposited with the bank ‘shall be owned by (the parties to the joint account) jointly, with the right of survivorship, and be subject to the order or receipt of either of them or the survivor of them . . .’. The language is clear, without ambiguity, unequivocal. These words can be, and we believe are, clearly understood or understandable by the public. If we are to give any effect to these accounts, why should this clearly expressed intention be ignored?”

If the Idaho precedent is followed, which places the burden on a joint depositor to prove a valid gift, the integrity of a joint tenancy bank account is nullified. Attorneys would immediately counsel their clients to test any joint tenancy agreement in court, whether involving personal or real property, upon the basis that the joint owner may not be able to prove all the elements

of a valid gift. The impact on the public and the courts is obvious.

The procedure of requiring claimants to prove a constructive trust regarding the proceeds of a joint bank account or of jointly held real property serves as a safeguard to the integrity of jointly owned property agreements since it requires the claimant to prove fraud or some form of unconscionable conduct. The burden is upon the claimant to go forth with such evidence. In the event there is no evidence of fraud or wrong doing, there is no basis for litigation and the property goes to the joint owner pursuant to the provisions of the joint agreement.

In 54 Am Jur §218, p. 167, it is stated that an implied trust by operation of law arises when one holds property by fraud, duress, or by commission of a wrong or any form of unconscionable conduct. In §223 at page 172 it provides that the disappointment of a mere expectation does not give rise to a constructive trust.

The following case is typical of the general law which holds that fraud, actual or constructive, is an essential element for a constructive trust. *Boardman v. Kendrick*, 280 P.2d 1053, 59 N.M. 167.

In 54 Am Jur §242, page 184, the following is found:

“The general rule is that a constructive trust arises where an heir, devisee, or legatee violates

a promise to the testator, expressly made or inferable from words or conduct, to hold an inheritance, devise or legacy for another or to give it to another, upon which the testator relied in the making or changing his will in order to favor such other person; *but it is generally held in such cases that the proof must establish the facts and circumstances giving rise to the constructive trust with an extraordinary degree of certainty and clarity.*" (emphasis added)

This protection was neutralized by the Utah trial court when it required appellant to carry the burden of going forth with the evidence.

The earlier Idaho cases recognized a constructive trust based upon fraud as evidenced by the case of *Brasch v. Brasch*, 47 P.2d 676 (1935). The Utah Supreme Court has followed the traditional concept of constructive trust down through the years. One of the earlier cases is the case of *Chadwick v. Arnold*, 95 P. 527 (1908). In this case the court made the following comment at page 530:

" . . . A second well-settled and even common form of trusts ex maleficio occurs whenever a person acquires the legal title to land or other property by means of an intentionally false and fraudulent verbal promise to hold the same for a certain specified purpose—as, for example, a promise to convey the land to a designated individual, or to reconvey it to the grantor, and the like—and having thus fraudulently obtained the title, he retains, uses, and claims the property as absolutely his own, so that the whole transaction by means of which the ownership

is obtained is in fact the scheme of actual deceit. Equity regards such a person as holding the property charged with a constructive trust, and will compel him to fulfill the trust by conveying according to his engagement."

The *Chadwick* case was reaffirmed in the case of *Hawkins v. Perry*, 253 P.2d 372 (1953).

The present status of the Utah law is reflected in the case of *Jewell v. Horner*, 366 P.2d 594, 12 Utah 2d 328 (1961), which held that the evidence failed to support a finding of a parol trust in favor of sons with respect to real property which had been conveyed by the decedent to his daughter. At page 597 of the opinion Justice Callister made the following observation:

" . . . To justify a court in determining from oral testimony that a deed which purports to convey land absolutely in fee simple was intended to be something different, such as a trust, such testimony must be clear and convincing. The proof must be something more than that modicum of evidence which this court sometimes holds to be sufficient to warrant a finding where the matter is not so serious as to the overthrow of a clearly expressed deed, solemnly executed and delivered."

It would seem that this reasoning holds for the instant case since the integrity of joint bank accounts and other joint property agreements are just as substantial as a deed of conveyance.

The Utah trial court committed prejudicial error in its procedural rulings in this matter and should be

reversed upon the grounds that the Utah courts on both substantive and procedural grounds have required claimants seeking to impose trusts on jointly held property to carry the burden of going forth with the evidence and showing by a preponderance of the evidence some fraud or unconscionable conduct. Such conduct was totally lacking in the case at bar.

POINT II

THE JUDGMENT OF THE COURT WAS CLEARLY AGAINST THE WEIGHT OF THE EVIDENCE.

It is undisputed that a bank account in the nature of a joint tenancy was created in the names of the decedent and appellant (R-1). Exhibit 1-C is the bank signature card and is found at page 21 of the record. The following language is pertinent to the issue at bar:

“The joint depositors whose names are signed on the reverse side of this card hereby agree with each other and with the above bank that all sums now on deposit heretofore or hereafter deposited by any one or more of said joint depositors with said bank to their credit as joint depositors, with all accumulations thereon, *are and shall be owned by them jointly with the right of survivorship*, and be subject to the check if the account is a checking account or receipt if the account is a savings account of any one or more of them or of the survivors or survivor of them, and pay-

ment to or on the check or receipt of any one or more of them or the survivor shall be valid and discharge said bank from liability.” (emphasis added)

At the time the decedent had appellant sign the joint bank card the only condition placed on the withdrawal of the money was that appellant take care of his burial expenses (T-56 and 57). It would seem that the provisions of the joint bank card should be controlling vesting the title in the bank proceeds in the survivor subject only to appellant’s agreement to take care of the decedent’s burial expenses. At no time did the decedent indicate to appellant that the balance of the proceeds were to be divided among the other children. The integrity of the written instrument creating the joint tenancy and the included ownership rights should be held intact.

The sister-in-law of decedent testified that he told her on the day of his death that “You don’t need to worry about that. I have money in the bank for Bessie, in her name” (T-11 & 12).

The brother of the decedent, who was very close to him during his stays in Ogden, testified that the decedent had told him “If I have anything when I am gone, I want Bessie and her family to have it” (T-18).

Dorothy Miller, a close friend during the decedent’s stays in Ogden, testified that the decedent said regarding respondent James Orville Woodward, “I’ll never give him another ‘D’ dime” (T-37). Mrs. Miller

further testified that on the Sunday afternoon of the decedent's death she stayed with him at the hospital and sat and talked with him. She testified that the decedent said at that time that the bank account "is in Bessie's name and my name, Bessie is to pay my bills, funeral bill and hospital, whatever I owe and over that, what is left is hers" (T-38). This witness again reaffirmed this on page 39 of the transcript as follows:

"Q. You heard him say that Bessie was to pay the bills and the rest was hers?

"A. Oh, yes; she was to 'pay all the bills and pay my funeral and everything I owe, she is to pay that off and the rest is hers'".

The Idaho attorney who handled the probate advised appellant that the money was hers and not respondents' (T-150). The \$4,000.00 paid to respondents Glen Woodward, Thelma Dalton, and Joyce Dickason and to their mother was not allowed as an inheritance tax deduction on the basis that it was a gift only (T-59).

The brother of the decedent further testified that appellant was the only child that the decedent ever spoke about and that the decedent said to him, "If it wasn't for Bessie, I wouldn't have any place to go except your place" (T-15). He further testified that the decedent had cried about the treatment he had received from respondent Thelma Dalton and had said, "Thelma told me, she says, Daddy, I don't want you to come to my place anymore. I don't want you to meet

my friends" (T-17). He also testified that appellant and only one of the respondents attended the viewing and funeral of their father (T-19).

Mr. and Mrs. Lawrence Webb, decedent's landlords while decedent was in Ogden, testified that appellant and decedent's brother were the only visitors at the apartment except for one visit by one of the respondents during the years that the decedent rented their apartment (T-23, 24 and 31). They further testified that the decedent visited appellant approximately 2 or 3 times a week and that appellant was the one he called on to drive him to Salt Lake City for cobalt treatments (T-24 and 25). They testified that decedent had advised them that "Well, he said that Bessie is the only one that he could depend upon" (T-24 and 32).

Dorothy Miller testified that the decedent told her he wasn't wanted at the homes of his other children and that they treated him cold every time he would go there (T-35). She further testified that the decedent told her, "I think I will stay away from all of them but Bessie" (T-36).

On cross examination of Mrs. Miller, respondents' attorney questioned her concerning what the decedent had said about taking care of all of his children and she replied that the decedent told her "He told me all along that he didn't think they deserved anything. He said, they didn't treat him like a father" (T-39). In response to a question from respondents' attorney con-

cerning whether or not she had seen any of the other children visit the deceased at the hospital during his last illness, Mrs. Miller answered no and then testified, "Because I asked him, I said, 'do the children know you are sick,' and he said, 'yes,' I said 'have they been over to see you,' and he looked at me just like that, just like he was making fun of me asking him that question" (T-40).

Respondent James Orville Woodward testified that he didn't attend the viewing or funeral, didn't see his father in the hospital during his last illness and did not know the address of his father's apartment in Ogden (T-139, 143 and 144). He further testified that he did not know that his father had sold part of the farm and that he had no letters in his possession nor had he had any conversations with his father which reflected that appellant had ever agreed to divide the proceeds of the bank account with the other children (T-143).

Respondent Glen Woodward testified that he had supervised the probate and had chosen the probate attorney as well as picked a friend to be the administrator of his father's estate (T-107). He testified that appellant had always claimed that the proceeds of the bank account were hers (T-110). He testified that he did not know when his father's birthday was, sent no birthday presents and saw his father only twice in the year of his death in 1964 (T-116 and 117). He testified further that he had lived in Salt Lake City since 1958 and that his father had been in his house

only once (T-120). He was never apprised by his father that part of the farm had been sold and testified that he had no letter nor had he had any conversations with his father indicating that appellant had promised to divide the bank proceeds with the other children. (T-120).

Respondent Joyce Dickason lived outside of the state of Utah during the last years of her father's life and had very little contact with him (T-54 and 112). She also failed to attend the viewing or funeral of her father (T-8). She made no appearance at the trial of this cause and accordingly did not testify.

Respondent Thelma Dalton testified that she did not visit her father in the hospital during his last illness and did not attend the viewing or funeral (T-84, 90 and 91). She testified that after the divorce she took sides with her mother against her father and that her father was aware of her feelings in this regard (T-93, 94 and 97). She testified that she chose not to go to his farm in Idaho because the living was "so crude out there and his water and everything, that was no place for a lady to spend" (T-95). She testified that it was her custom not to give him Christmas presents, birthday presents and not to send him mail (T-98). She further testified that her father had never told her part of the farm was sold, and that she had no letters from him nor had she any conversations with him indicating that appellant had agreed to divide the proceeds of the bank account (T-99 and 100).

Appellant strongly urges that the foregoing testimony of independent witnesses and of respondents justifies a reversal of the judgment based upon the rule set forth in *Haws v. Jensen*, 209 P.2d 229 (Utah 1949) at page 233 of the opinion wherein the Court said:

“ ‘The findings of the trial courts on conflicting evidence will not be set aside unless it manifestly appears that the court has misapplied proven facts or made findings clearly against the weight of the evidence.’ ”

CONCLUSION

Appellant submits that the trial court committed prejudicial error when it chose to follow Idaho law both on substantive and procedural matters, and by doing so, casting aside the whole theory of respondents' cause of action of a constructive trust. The precedent of requiring a defendant to carry the burden of going forth with the evidence and assuming the burden of proof in a case of this type is dangerous indeed because of its tendency to create litigation and its attack on the integrity of written instruments creating joint ownerships in property.

It is appellant's further assertion that the testimony at the trial established clear and convincingly that the decedent intended that appellant should have the proceeds of the joint bank account due to the close relationship he had with appellant during the last years of his life and the neglect of respondents.

It is respectfully submitted that the posture of this case compels a reversal based on the law and the facts.

Respectfully submitted,

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