1969

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

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. 11...

BRIEF OF RESPONDENTS

Appeal From The Second Dist... Court For Weber Coun... The Honorable John F. Wahlq...

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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.

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Defendant-Appellant.

Case No. 11593

BRIEF OF RESPONDENTS

POINT I

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UNDER IDAHO LAW DEFENDANT CLEARLY HAS THE BURDEN OF GOING FORWARD WITH THE EVIDENCE AND PROVING ALL OF THE ELEMENTS OF A GIFT, EXCEPTING IRREVOCABLE DELIVERY, BY CLEAR AND CONVINCING EVIDENCE.

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STATEMENT OF THE NATURE OF CASE

Plaintiffs and defendant are all of the heirs at law of one James Leon Woodward, deceased. During the lifetime of James Leon Woodward, he placed defendant-appellant Bessie Monson on a joint bank account with him which he maintained in the First Security Bank in Preston, Idaho. Following the death of James Leon Woodward, Bessie Monson, defendant-appellant, withdrew the funds and claimed them as her own. This is an action brought by plaintiffs against defendant by which they seek to recover their fair distributive share of the said joint bank account.

DISPOSITION IN LOWER COURT

This action was commenced in the District Court of Weber County. On January 15, 1969 it was tried before the Honorable John F. Wahlquist, sitting without a jury. Judgment was rendered in favor of James Orville Woodward against defendant Bessie Monson in the sum of $2,599.93, judgment was rendered in favor of Glen Woodward and against defendant Bessie Monson in the sum of $1,335.93, judgment was rendered in favor of Thelma Dalton and against defendant Bessie Monson in the sum of $1,335.93, and judgment was rendered in favor of Joyce Dickason against defendant Bessie Monson in the sum of $1,335.93. Plaintiffs were also awarded costs in the amount of $18.20.

STATEMENT OF FACTS

Respondents are not entirely in agreement with appellant's statement of facts, and therefore re-state facts pertinent to the issues before the Supreme Court of the State of Utah on appeal.

UNDISPUTED FACTS

The following facts do not appear to be in dispute, inasmuch as they are stated in appellant's statement of facts: Plaintiffs-respondents and defendant-appellant are the sole surviving children of James Leon Woodward, who died a single man, and intestate, on August 31, 1964. Prior to his death, James Leon Woodward owned a farm in the State of Idaho near Preston, Idaho. James Leon Woodward maintained his personal savings account in the First Security Bank of Preston, Idaho. During the summer of 1963 he went to Ogden, Utah, and had defendant-appellant Bessie Monson, sign a form required by the bank for creating a joint bank account in the names of James Leon Woodward and Bessie Monson. Funds in the bank account represented primarily if not entirely proceeds from the sale of farm land previously owned by James Leon Woodward.

At the time of the death of James Leon Woodward funds in the amount of $12,500.00 were on deposit in the First Security Bank of Preston, Idaho. Following the death of James Leon Woodward, defendant-appellant Bessie Monson transferred the funds from the First Security Bank of Preston,

Idaho to the Bank of Ben Lomond in Ogden, Utah in an account she had set up in her own name. From these funds she paid certain expenses of last illness and burial of James Leon Woodward. She paid the sum of $1,000.00 to her mother, Safrona Woodward, the divorced wife of James Leon Woodward, and paid the additional sum of $1,000.00 to each of the plaintiffs-respondents, with the exception of James Orville Woodward. She did not pay any sums whatsoever to James Orville Woodward.

DISPUTED FACTS

The following facts are either in dispute, or were not mentioned in appellant's statement of facts: During his lifetime, James Leon Woodward lived on a farm owned by him in Idaho near Preston, Idaho, approximately nine months out of the year. The farm consisted of about 100 acres (T-51). He spent approximately three months, the winter months, in Ogden, Utah, in a rented apartment. He came to Ogden, Utah on weekends during the spring, summer and fall months, from time to time. (T-12, T-14, T-15, T-67).

James Leon Woodward sold a portion of his farm, and placed the proceeds resulting therefrom in a bank account in the First Security Bank in Preston, Idaho (T-55, T-56).

During the summer of 1963 James Leon Woodward told defendant Bessie Monson that he had a card for her to sign. He said, "I want you to sign

this so if anything happens to me you can take care of my burial and draw the money out and take care of my burial." (T-56, T-57) He gave defendant-appellant Bessie Monson no further instructions, and said nothing further to her about the account. (T-56, T-57) This was the only conversation defendant-appellant Bessie Monson ever had with her father concerning the joint account. (T-74)

James Leon Woodward did not deliver possession of the pass book to Bessie Monson during his lifetime. (T-58, T-68) During the lifetime of James Leon Woodward, defendant-appellant Bessie Monson made no withdrawals from the joint account. (T-69) She had no intention of making any withdrawal from the account during his lifetime. (T-69) She made no deposits to the account during the lifetime of James Leon Woodward. During the lifetime of James Leon Woodward Bessie Monson did not feel that the account, or the funds contained therein, belonged to her at all. (T-69) James Leon Woodward *never* told defendant-appellant Bessie Monson that he gave her the account or the money in it. (T-69) Bessie Monson did not feel that the funds in the bank account belonged to her until after the death of James Leon Woodward. (T-75)

Just prior to his confinement in the hospital during his last illness, James Leon Woodward spent several days with Bessie Monson at her home in Ogden, Utah. (T-64) He was admitted to the hos-

pital on August 29, 1964 and died on August 31, 1964. (T-64) He was admitted on Friday, and died the following Sunday. (T-64)

Thelma Dalton one of the plaintiffs-respondents herein was not fully advised of the seriousness of the last confinement. On Sunday, her mother notified her that her brother Glen Dalton and his wife had gone to Ogden, and that James Jeon Woodward was in the hospital. (T-84) James Orville Woodward was not notified of his fathers last illness until after his father had passed away. (T-137) By that time his father's body had already been removed to Preston, Idaho. (T-137) Due to the entire set of circumstances surrounding the death of his father and the lack of notification, James Orville Woodward became too sick and nervous to go to the funeral. (T-138, T-139) Thelma Dalton was unable to attend the funeral due to car trouble. (T-84)

James Orville Woodward lived with his father for two winters in Ogden prior to the time his father died. On one occasion he lived with his father during the winter months in Ogden about four years before he died, and on another occasion he spent the winter months with him about two years before the death of James Leon Woodward, his father. (T-135)

Prior to his death, James Leon Woodward had told Thelma Dalton that he had money for her. (T-86)

Following the death of James Leon Woodward defendant-appellant Bessie Monson went to the home

and residence of James Leon Woodward in Idaho, and removed all of the papers nad documents pertaining to the sale of the farm property by James Leon Woodward and the bank account. (T-129)

Following removal of these documents and papers from the farmhouse, her brothers and sisters, plaintiffs-respondents herein, inquired of Bessie Monson defendant-appellant, what had become of the farm. They inquired of Bessie Monson about funds which they felt their father would have had if the farm had been sold. Although Bessie Monson had the papers relating to the sale of the farm and surrounding the transaction in her possession at that time, she told her brothers and sisters that she didn't know anything about it. (T-131)

Defendant-appellant Bessie Monson admitted during the course of the trial that her brother Glen Woodward, one of the plaintiffs-respondents herein, asked her about the farm, whether it had been sold, where the proceeds of the farm went, and that she told him she didn't know at a time when she very well knew. She admitted that her answer to her brother was not entirely truthful. (T-70) She further admitted that she told her sister, Thelma Dalon, one of the plaintiffs-respondents herein, that she didn't know where the proceeds from the sale of the farm were at a time when she well knew where the proceeds were, and further admitted that her statements to her sister Thelma Dalton were not entirely truthful. (T-70)

Following the funeral Bessie Monson told her brother Glen Woodward that she did not know what had happened to the proceeds from the sale of their father's farm. (T-111, T-109)

On the Tuesday following the funeral, Thelma Dalton went to visit her father's grave, and upon returning stopped at the residence of Bessie Monson in Ogden, Utah. (T-85) Mrs. Dalton inquired of Bessie Monson where her father's money was, and explained that a year earlier James Leon Woodward had promised Thelma Dalton that there was money available for her. (T-86) Bessie Monson said there wasn't going to be any money left. (T-86)

ARGUMENT

POINT I

IDAHO LAW IS APPLICABLE TO THE ISSUES IN THIS CASE.

It is conceded in this case that the questioned bank account was maintained in the First Security Bank of Preston, Idaho in Preston, Idaho. The deceased James Leon Woodward maintained a 100-acre farm in Idaho, near Preston, Idaho, for some years. In his later years a portion of it was sold, and he maintained a smaller farm together with a home in Idaho near Preston, Idaho. He spent approximately nine months out of the year in Idaho on his farm property. He maintained his personal affects and papers at his farmhouse in Idaho.

In 10 Am. Jur. 2d, Banks § 376 (1963) it is stated:

> "It seems to be agreed that title to and rights in a bank deposit standing in the names of the depositor "and" another or the depositor "or" another is governed by the law of the place where the deposit has been made and the account is kept.[3] This general rule has been applied to deposits in the names of spouses, both in cases in which the spouses were, and in those in which they were not, residents of the state in which the deposit was made.[4]
>
> Where persons in a foreign country voluntarily transferred money to a New York bank for deposit in a joint and survivorship account, the account was upheld under the New York law as such, even though it would have been invalid under the foreign law.[5]"

The law of the jurisdiction where a bank account is maintained is controlling.

Appellant argues that Utah substantive law should have been controlling in this case upon the theory that when Bessie Monson signed a bank signature card in Utah, the last act had been performed which created a three-party contract and set up a joint bank account in the First Security Bank in Preston, Idaho. Query, if the signature card had never been delivered to the First Security Bank in Preston, Idaho, would a joint account have been created? Obviously not. The last acts necessary for the completion of the contract, even under defendant's theory, would have been the delivery of the bank signature card, duly executed, to the First Security Bank at Preston, Idaho, together with the

acceptance thereof by the bank and the setting up of the account.

Appellant relies heavily on Buhler vs. Maddison, 166 P.2d 205 (1946) in his brief, and cites a portion of the opinion. Following the decision referred to by appellant, the Supreme Court of the State of Utah granted a re-hearing of the case. As stated in the subsequent decision found at 109 Ut. 267, 176 P.2d 118 (1947) the Supreme Court of the State of Utah stated:

> "We granted a re-hearing and have re-examined the record and reconsidered the entire case."

The Buhler vs. Maddison case involved a workman's compensation claim. An injury occurred in the State of Nevada, but as defendants resided in the State of Utah, action was brought in the State of Utah based upon the Nevada Workman's Compensation Act. The Court held that defendants were nonaccepting employers under the Nevada Compensation Act.

The Nevada Compensation Act had a provision in it which stated as follows:

> "(4) In actions by an employee against an employer for personal injuries sustained, arising out of and in the course of the employment where the employer has rejected the provisions of this act, it shall be presumed that the injury to the employee was the first result, and growing out of the negligence of

> the employer, and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence." Para. 2680, Sec. 1 (b), Nevada Comp. L. 1931-41.

The Utah Supreme Court was confronted with the question as to the effect and operation of the presumption of negligence and proximate cause established by the Nevada Act. Defendant argued that such presumption shifts only the burden of going forward with the proof, and that once the employer has produced evidence to rebut the presumption of negligence, the presumption is spent, and it drops out of the picture. Plaintiffs argued that the presumption shifts the burden of convincing the judge or jury on the issue of negligence and proximate cause, often called the Burden of Pursuasion, and that instead of such burden being upon the plaintiff as it usually is, defendant had the burden, and that upon proof of the employer employee relationship, of the injury arising out of and in the usual course of employment, and that the employer had not accepted the act relative to insurance, that plaintiff is entitled to a judgment as a matter of law unless the defendant shall produce evidence that the defendant was not negligent; that in determining such question, the presumption of negligence of the defendant remains as an element to be weighed with the other evidence by the trier of fact.

The Utah Supreme Court in the Buhler vs. Mad-

dison case was concerned over whether or not the presumption of negligence and proximate cause involved in the action were matters of substance, a part of the cause of action, or were they merely matters of procedure. If they were matters of substance, the Nevada law would clearly control. If they were matters of procedure only, the law of the State of Utah would control. The Court stated:

> "In determining whether an element of the cause of action is a matter of substance or a procedure, the Court will examine the statute or rule of law creating the claim, right or duty, and the interpretations thereof by the Courts of the state creating the right, or where the cause of action arose. If the requirement concerning proof of an element of a cause of action exists in the lex loci, and if such requirement is there interpreted as a condition of the cause of action itself, the Court of the forum would apply the rule of the foreign state. This is so because "the remedial and substantive portions of the foreign law are so bound together that the application of the usual procedural rules of the forum would seriously alter the effect of the operative facts under the law of the foreign state."

The Supreme Court of the State of Utah held:

> "It must follow therefor that the statutory presumption of negligence and proximate cause are so closely allied and interwoven with the cause of action itself that it cannot be separated therefrom without seriously impairing the integrity of the cause of action. The law of Nevada, lex loci, and not the law of Utah,

> lex fori must govern on the question as to whether the jury could consider and weigh the presumption of negligence along with the other evidence on the question of defendants negligence and proximate cause. The trial Court applied the Nevada rule which was the correct procedure."

The Supreme Court stated to the extent that their prior opinion, that being the opinion cited by appellant in this brief, is not in harmony with this one, it is set aside.

The Idaho concept that where money in a joint account is deposited by one party and thereafter a question of the depositors intent arises, that the party ascerting the right to the proceeds must prove all of the elements of a gift, excepting irrevocable delivery, by clear and convincing evidence is so interwoven with the substantial rights of the parties to the bank account, that it cannot be separated therefrom without seriously impairing the integrity of the cause of action based upon Idaho law. The law of the State of Idaho, lex loci, would therefore necessarily be applicable to the issues in this case.

Appellant, in Point I of his argument, keeps referring to the issue of constructive trust. While plaintiffs did, as part of the relief prayed for in their Complaint, seek the declaration of a constructive trust over the proceeds obtained from the bank account by Bessie Monson, they also asked as separate relief that they be awarded a money judgment

against defendant Bessie Monson. The trial Court did not impose a constructive trust on the proceeds, but instead granted plaintiffs a judment against defendant without imposing a constructive trust. The writer fails to see the materiality of appellants references to constructive trust in Point I of his argument.

POINT II

UNDER IDAHO LAW DEFENDANT CLEARLY HAS THE BURDEN OF GOING FORWARD WITH THE EVIDENCE AND PROVING ALL OF THE ELEMENTS OF A GIFT, EXCEPTING IRREVOCABLE DELIVERY, BY CLEAR AND CONVINCING EVIDENCE.

The State of Idaho within recent years has decided two cases bearing on this subject. The first case is entitled Idaho First National Bank vs. First National Bank of Caldwell and is found at 340 P.2d 1094 (1959). In this case a man by the name of Griffiths, who was by profession an attorney at law, created a joint account, naming his nephew, Walter Griffiths Jr., as a joint depositor thereon. Walter Griffiths Sr. passed away, and defendant Walter Griffiths Jr. claimed he was entitled to the funds held in the joint bank account. The administrator of the Estate of Walter Griffiths Sr., deceased, brought action seeking to recover the funds previously held in the joint bank account so that they might be distributed to the heirs pursuant to the probate proceedings which had been initiated. Judgment was entered in favor of the plaintiff and

against the defendant, and defendant appealed to the Supreme Court of the State of Idaho.

Idaho Supreme Court held:

> "Where money in a joint account is deposited by one party, and thereafter a question of the depositor's intent arises, the party asserting the gift must prove all the elements of a gift, excepting irrevocable delivery, by clear and convincing evidence. The question of intent of decedent having been raised, defendants were required to assume the burden of proof and to establish by clear and convincing evidence such elements of a gift."

In a more recent case entitled In Re Chase's Estate, found at 348 P.2d 473, (1960) the Idaho Supreme Court again had occasion to decide a case concerning joint bank accounts and Idaho law pertaining to presumptions and burdens of proof. In Re Chase's Estate concerns a situation in which one of two joint depositors claimed to be entitled to funds in a joint account following the death of the other joint depositor. The Idaho Supreme Court In Re Chase's Estate stated:

> "The issue of Mr. Chase's intent in creating the accounts having been raised, the question is whether respondent, by clear and convincing evidence, proved a gift to her of those bank accounts, completed upon the death of decedent. With this in mind, we shall review the evidence."

POINT III

THE JUDGMENT OF THE TRIAL COURT IS CLEARLY SUPPORTED BY THE EVIDENCE.

Defendant Bessie Monson, although she had the burden of proving all of the elements of a gift of the bank account, excepting irrevocable delivery, by clear and convincing evidence, failed to present any evidence at all to prove that James Leon Woodward, deceased, made a completed gift to her during his lifetime. In fact, evidence clearly shows that she did not receive a gift of the funds from James Leon Woodward. There were no words of donative intent. The only thing James Leon Woodward told her durin his lifetime concerning said account was "Just a minute, I have got a card out in the car I have been carrying around and have forgot to have you sign, I want you to put your signature on it so if anything happens to me you can take care of my burial expenses." No other conversation took place between Bessie Monson, defendant-appellant and deceased James Leon Woodward during his lifetime concerning the joint account. (T-68) James Leon Woodward *never* told Bessie Monson she would be entitled to retain the balance after paying burial expenses.

Did James Leon Woodward assume that Bessie Monson, defendant-appellant would treat her brothers and sisters, plaintiffs-respondents fairly and distribute the balance of the proceeds evenly among all of his sons and daughters following the

payment of burial expenses? This we will never know.

James Leon Woodward did not deliver possession of the bank pass book to Bessie Monson during his lifetime. (T-58, T-68) Bessie Monson made no deposits or withdrawals from the bank account during the lifetime of James Leon Woodward. (T-69) He never told Bessie Monson that he gave her the account or the money in it. (T-69) Bessie Monson never considered the funds in the account were hers until after the death of James Leon Woodward. (T-75)

Following the death of James Leon Woodward, Bessie Monson removed all the papers and documents relating to the business transactions of James Leon Woodward and pertaining to the joint savings account from his personal residence in Preston, Idaho. (T-129) Although she had all of the papers relating to the transaction involving the sale of the farm, and well knew that the proceeds from the sale of the farm had been placed in a joint bank account with her, she attempted to conceal the funds from her brothers and sisters. She denied to them that she knew anything pertaining to the transaction involving the sale of the farm, at a time when she not only knew the particulars of the farm transaction but had the papers pertaining to it in her possession. She denied she knew of the existence of a bank account in which the proceeds from the sale of the farm had been placed at times when she knew

the existence of the account, and in fact at times after she had withdrawn the funds and placed them in her own account. (T-70, T-88, T-109, T-130, T-131) If Bessie Monson felt genuinely and honestly entitled to the funds, why did she feel it necessary to lie to her own brothers and sisters and attempt to conceal the existence of the joint bank account?

POINT IV

IT IS THE DUTY OF THE SUPREME COURT TO REVIEW THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE FINDINGS, AND THEY MUST BE ALLOWED TO STAND IF REASONABLE MINDS COULD AGREE WITH THEM.

The transcript of testimony in this case, as in any case, contains merely the words spoken at trial. It cannot contain inflections or tones of the voices of the witnesses. The demeanor of the witnesses, their apparent candor, or lack thereof, as gained from their overall appearance in the Court room, unfortunately, cannot be made a part of a transcript of testimony. The trial Court sits in a position of great advantage in that the trier of fact on the trial Court level has the opportunity of observing the demeanor and other behavior of the witnesses, has the advantage of hearing the inflections and tones of the witnesses' voices. Much is conveyed beyond the spoken word through voice inflection and other characteristics of a witness. This is especially so where witnesses do not possess high degrees of education,

and have taken up lines of work which do not require regular expression or communication, such as construction type work and the like. Very often the inflection and overall characteristics of a witness convey even more than their spoken words.

The Utah Supreme Court has pronounced its duty to review the evidence in the light most favorable to the findings of the trial Court, and stated that they must be allowed to stand if reasonable minds could agree with them on many occasions. Rather than citing all of the cases in which this principal has been stated, we will simply refer to Lawrence vs. Bamberger Railroad Company found at 3 Ut. 2d 247, 282 P.2d 335 wherein the Supreme Court of the State of Utah states:

> "When the court has made findings and entered judment thereon as was done here, it is then our duty to review the evidence in the light most favorable to the findings, and they must be allowed to stand if reasonable minds could agree with them. Likewise every reasonable intendment ought to be indulged in favor of the validity and correctness of the judgment under review, and it will not be disturbed unless the appellant meets his burden of affirmatively showing error."

Appellant has failed to show that there is any reason for disturbing the findings of the trial Court in this case.

CONCLUSION

The judgment of the trial Court should be affirmed, and plaintiffs-respondents should be awarded costs.

Respectfully submitted,

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