

1993

The Estate of Martin Haro v. Maria Guadalupe Haro and Everardo Haro : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 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.

Donald C. Hughes; Scott Holt; J. Kent Holland; Anderson & Holland; Attorneys for Plaintiff/Defendant.

Robert H. Henderson; Snow, Christensen & Martineau; Attorneys for Appellee.

Recommended Citation

Reply Brief, *The Estate of Martin Haro v. Haro and Haro*, No. 930702 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/5608

This Reply Brief 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.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

In The Utah Court Of Appeals
State Of Utah

50
A10
DOCKET NO. 930702-CA

THE ESTATE OF MARTIN HARO,)
Plaintiff/Appellant,)

REPLY BRIEF OF APPELLANT

vs.)

Priority No. 15

MARIA GUADALUPE HARO and)
EVERARDO HARO)
Defendants/Appellees.)

Case No. 930702-CA

**APPEAL FROM AN ORDER OF DISMISSAL ISSUED BY THE
SECOND DISTRICT COURT, DAVIS COUNTY, JUDGE WEST**

Robert Henderson
Snow Christensen and Martineau
10 Exchange Place, Eleventh Floor
Salt Lake City, UT 84145
Attorney for Defendant/Appellee, Maria Haro

Scott Holt
44 North Main Street
Layton, UT 84041
Attorney for Plaintiff/Appellant

J. Kent Holland
Anderson & Holland
623 East 100 South
Salt Lake City, UT 84147
Attorney for Defendant/Appellee, Everardo Haro

Donald C. Hughes
795 - 24th Street
Ogden, UT 84401
Attorney for Plaintiff/Appellant

FILED

MAR 2 1994

TABLE OF CONTENTS

Table of Contents -----2

Table of Authorities ----- 3

Argument -----7

POINT I ----- 7

POINT II ----- 8

POINT III ----- 10

POINT IV ----- 11

Conclusion and Requested Relief ----- 12

Signature of Counsel ----- 12

Certificate of Service ----- 13

TABLE OF AUTHORITIES

STATUTES

§ 78-11-7 Utah Code Ann. 1953, as amended 4

§ 78-11-12 Utah Code Ann. 1953, as amended 4

RULES

Rule 15 of the Utah Rules of Civil Procedure 5, 6

Rule 17 of the Utah Rules of Civil Procedure 4, 5, 6

CASE LAW

Behm's Estate v Gee, 213 P.2d 657 (Utah 1950) 4, 6

Doxey-Layton Co. v Clark, 548 P.2d 902 (Utah 1976) 5

Switzer v Reynolds, 606 P.2d 244 (Utah 1980) 4, 6

Vina v Jefferson Ins. Co., 761 P.2d 581 (Utah 1984) 5

ARGUMENT

POINT I

THE FIRST ISSUE IS THE DETERMINATION IF THE INITIAL COMPLAINT IS A NULLITY NOT SUBJECT TO RULE 17 CORRECTION

The nature of the wrongful death claim is confused in the argument of Defendants. It may be helpful to examine how funds collected would be distributed. Two statutes are involved. Utah Code Annotated § 78-11-7 provides permission for the heirs or personal representative of a deceased to maintain a wrongful death action. Utah Code Annotated § 78-11-12 provides a broader scenario. After stating that the cause of action does not abate or extinguish on death the statute states, "The injured person or the personal representative or heirs of the person who died have a cause of action against the wrongdoer or personal representatives of the wrongdoer for special and general damages. . . ."

Three separate entities have a cause of action for special and general damages, 1) the injured person, 2) the personal representative, 3) the heirs. The cause of action of the injured person and that of the heirs is different. *Behm's Estate v Gee*, 213 P.2d 657 (Utah 1950) points out that the wrongful death action is a new cause of action. The basis of it is the injury to relationship. The claim of the heirs is separate from the other assets of the estate and the funds are not to be commingled with the other assets of the estate. The cause of action of the injured person becomes the claim of the estate as separate from the heirs even though the heirs claim may be prosecuted in several ways by several entities.

Special damages such as medical bills will be administered by the estate for the benefit of creditor's of the estate and are not part of the relationship injury. The wrongful death fund is a totality of the value of the life of the deceased. "In this the full value of the life of the deceased

is determined." This is true whether the action be prosecuted by the personal representative or one or more of the heirs. *Switzer v Reynolds*, 606 P.2d 244 (Utah 1980).

The estate is the vehicle where the various claims are sorted. Some are administered for the sole benefit of the estate others are administered for the sole benefit of the heirs. The estate is a party in interest. The heirs who have claims against the fund created from the wrongdoer are also parties in interest. A question that must be addressed is what difference there is in a complaint brought in the name of the estate at the request of the personal representative and a complaint brought in the name of the personal representative for the estate. The difference is the name in the heading. In either case Defendant's would have the right to ask for the designation of the real parties in interest. Adding all of the children making claim to any potential fund created from the Defendants is merely a manner of making explicit who may ultimately actually receive funds. A primary entity of who may receive funds is the estate itself. It will administer the funds received as special damages such as medical bills for the benefit of the estate.

The filing in the name of the estate was not a nullity.

POINT II

A GRANT OF THE MOTION TO SUBSTITUTE PARTIES DOES NOT CREATE NEW CLAIMS

Rule 17 of the Utah Rules of Civil Procedure provides:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder, or substitution of the real party in interest; and such ratification, or joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. (Emphasis added.)

Granting Plaintiff's motion to substitute parties should relate back in time. Rule 15(c) explicitly states such "amendment relates back to the date of the original pleading." The test to determine if new claims have been brought is the determination of the identity of interests. The

test referenced in *Doxey-Layton Co. v Clark*, 548 P.2d 902 (Utah 1976) and *Vina v Jefferson Ins. Co.*, 761 P.2d 581 (Utah 1984) sets a determination of whether the new and the old parties have an "identity" of interests.

Wrongful death claims clearly demonstrate an identity of interest. All of the heirs are bound by the trial of a wrongful death action by any one heir or the estate. *Switzer v Reynolds*, *supra*. The heirs and the estate have the exact interest in pursuing the claim against the Defendants, namely, to create a fund for distribution within the estate based upon their respective claims. The court in the instant case would determine "the full value of the life of the deceased." The heirs would make their claims in the estate for their loss of relationship. Even though the loss of relationship funds would not be commingled nor administered they do pass through the estate. *Behm's Estate v Gee*, *supra*.

Rule 17 provides, "ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." The effect of substituting the children as plaintiffs is as if they commenced the action. The action filed by the Estate of Martin Haro was directed and authorized by the Personal Representative, Sylvia Haro. The semantic differences should not be allowed to destroy the right to recovery.

CONCLUSION

The initial filing in the trial court was a claim by the estate. Such a filing is valid. At worst it is susceptible to correction by substitution of the real parties in interest. Wrongful death claims of the heirs may be pursued by a variety of entities. Even though they are not administered they may pass through the estate. This case should be allowed to proceed to trial

on the merits. The Court of Appeals should reverse the District Court's dismissal, allow the substitution of parties and remand the case back to the District Court for further proceedings.

Dated this 28th day of February, 1994.

A handwritten signature in black ink, appearing to read 'D. Hughes', written over a horizontal line.

Donald C. Hughes
Attorney for Plaintiff/Appellant

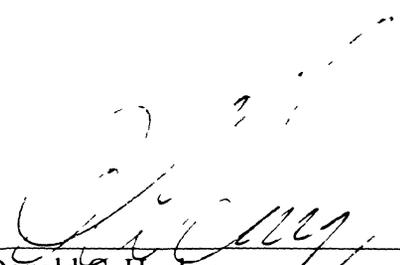
CERTIFICATE OF SERVICE

I hereby certify that on February 28, 1994 I served four copies each of Appellant's Brief upon Robert Henderson and Kent Holland the attorneys for the Defendants/Appellees in this matter, by mailing said copies to them by first class mail with sufficient postage prepaid to the following addresses:

Robert Henderson
Snow Christensen & Martineau
P.O. Box 45000
Salt Lake City, Ut 84145

Kent Holland
Anderson & Holland
P.O. Box 11643
Salt Lake City, Ut 84147

Dated February 28, 1994



Donald C. Hughes
Attorney for Plaintiff/Appellant