1973

First Security Bank of Utah, N. A. As Administrator of the EStates of George Hatton Buckley And Pearl Murdock Buckley v. Lucile Buckley Hall And Harold E. Hall : Petition For Rehearing And Brief

IN THE SUPREME COURT
OF THE STATE OF UTAH

ST SECURITY BANK OF)
AH, N.A., as Administrator)
he Estates of GEORGE HATTON)
CKLEY and PEARL MURDOCK)
CKLEY,)
)
Plaintiff and Respondent,)
)
-vs-) Case No.
) 12817
ILE BUCKLEY HALL, and)
OLD E. HALL,)
)
Defendants and Appellants.)

PETITION FOR REHEARING AND
BRIEF

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FIRST SECURITY BANK OF UTAH, N.A., as Administrator of the Estates of George Hatton Buckley and Pearl Murdock Buckley,	)	
Plaintiff and Respondent,	)	
-vs-	)	Case No. 12837
LUCILE BUCKLEY HALL, and HAROLD E. HALL,	)	
Defendants and Appellants.	)	

PETITION FOR REHEARING AND BRIEF

When this matter was presented on appeal, there were three distinct legal issues. The first related to the kind of proof of intervivos gift Appellant was obliged to adduce and whether (even if a "clear and convincing" standard was properly applied) Appellant's proof was adequate. The decision demonstrates that this Court fully

considered and unequivocally ruled on that issue. A litigant can ask no more.

Appellant's distress derives from the Court's off-hand treatment of the remaining, equally dispositive issues raised by the briefs. Appellant petitions for rehearing on the following grounds:

1. This Court erred in failing to recognize a de facto distribution of the Estate of George Buckley by concerted action of his heirs.

2. This Court erred in holding that "the Court below found the evidence was insufficient to show that Pearl Murdock Buckley received the shares as a part of that de facto distribution."

3. This Court erred in its failure to rule that the estate's proper action, under the circumstances, was against the Mercur Dome Gold Mining Company, the issuer of the stock which was the subject of this litigation for replacement of shares wrongfully transferred.

Respectfully submitted this 30th day of January, 1973.

FRANK J. ALLEN
Attorney for Defendant-Appellant

BRIEF IN SUPPORT OF PETITION

POINT I

THIS COURT ERRED IN FAILING TO RECOGNIZE A DE FACTO DISTRIBUTION OF THE ESTATE OF GEORGE HATTON BUCKLEY BY CONCERTED ACTION OF HIS HEIRS

This Court disposed of the de facto distribution issue by erroneously asserting that the trial court had found there had not been a de facto distribution. If the trial court had indeed made such a finding, it would be incumbent on this Court to reverse the finding. The evidence that the heirs got together and divided up George Buckley's property after his death is not just clear and convincing, and it is not just uncontroverted; the fact of such a distribution was the subject of stipulation in open court. The relevant quotation from the transcript is the following from pages 148 and 149:

"Q (By Mr. Morgan) Who handled the distribution of your father's estate?

MR. ELLIS: We object to this line of questioning, your Honor. It's completely immaterial.

THE COURT: I believe it is, Mr. Morgan. What do you claim by it?

MR. MORGAN: Just that they '(the heirs)' had a distribution of the estate without probating it by a judicial proceeding.

THE COURT: I think Mr. Ellis will stipulate to that, that it was divided up.

MR. ELLIS: That there was no formal probate. Yes, we would so stipulate."

Based on this stipulation, the trial court excluded any testimony about the specific participation of the heirs in the procedures of dividing up George Buckley's property. So far as the trial court was concerned, the heirs did divide and intend to effect a final distribution of George Buckley's estate. If the trial court found otherwise in the face of:

1. The quoted stipulation, and

2. the uncontroverted evidence that Bert got the car (T-148), Gerald got the ring (T-148), and each of the children got $150.00 (T-157),

then this Court has an obligation to reverse that finding unless it now rejects the fundamental principle that findings should be based on evidence.

It is particularly absurd to assume that the heirs ignored the stock in dividing up the estate. Throughout the trial, the living heirs referred to the stock as George Buckley's most valuable asset. On the one occasion in 1947 when Gerald Buckley visited his father, the stock's value was, according to Gerald, the principal subject of discussion (T-190).

Each of George Buckley's heirs living at the time this suit was commenced admitted in deposition or in the course of trial that the stock belonged to their mother after their father

death. Gerald (as the dissenting opinion points out) testified that the stock was "mom's stock". Bert admitted that the "probate" was "just handled among the heirs" (deposition of Bert Buckley, p. 18) and that the stock was in his mother's possession because "it was just left to her" (deposition, p. 6).

We submit that, on the evidence, this Court erred in failing to recognize an effective distribution by agreement of the heirs.

POINT II

THE COURT ERRED IN RULING THAT THE TRIAL COURT FOUND THE EVIDENCE INSUFFICIENT TO SHOW A DE FACTO DISTRIBUTION

The trial court made no definitive findings and adopted no clear conclusions with regard to the effect of his heirs' distribution among themselves of George Buckley's property after his death. In fact, the trial court very obviously proceeded on a firm conviction that such action

by heirs could not have legal effect. It is inconceivable that the trial court could have found that the heirs did not attempt to effect a distribution. The Court itself called for and got a stipulation that the heirs made such an attempt, and thereafter the Court refused to hear evidence on the nature or details of the attempt.

Despite the allegation in the Complaint that the "stock certificates were 'not' disposed of by informal agreement among the heirs", the trial court made no finding as to the truth of that allegation because it considered the allegation immaterial. What the trial court did find (Finding Number 4) was that "no probate of the Estate of George Hatton Buckley has heretofore been made and" therefore (our insertion) "no distribution of the . . . certificat . . . has ever been made."

As argued in Point I hereof, this Court could not properly permit a finding that no de facto distribution was undertaken. What is particularly disturbing, however, is that this Court should dispose of the entire set of de facto distribution issues by the bold assertion that the trial court made a finding it in fact neither made nor could have made. What is the effect of a division of a deceased's property among his heirs by their agreement? Can the division be disturbed after more than a decade and in the absence of creditor claims by any heir who has dissipated his share? These are facets of the law as to which this Court has offered no teaching. The issues are squarely presented by this case, and they should not be avoided.

POINT III

THIS COURT ERRED IN ITS FAILURE TO RULE THAT THE ESTATE'S PROPER ACTION, UNDER THE CIRCUMSTANCES, WAS AGAINST THE MERCUR DOME GOLD MINING COMPANY, THE ISSUER OF THE STOCK WHICH WAS THE SUBJECT OF THIS LITIGATION, FOR REPLACEMENT OF SHARES WRONGFULLY TRANSFERR

One issue raised by the brief which this Court completely ignored relates to the nature of the relief which the Courts should afford in a cas such as this. At the time this action was comme and at the time the administrator was appointed, there was no stock outstanding in the name of George Hatton Buckley. The stock had been transferred on the issuer's records to Lucile Buckley Hall and her purchasers. They were th legal owners. If the issuer had improperly tran ferred the shares, then the estate had a cause o action against the issuer. So well recognized is

the obligation of an issuer to replace shares improperly transferred that issuers routinely require bonds from applicants for transfer who cannot produce the endorsement of the record owner. Mercur Dome Gold Mining Company required a bond in this case, and Gerald Buckley was one of the guarantors.

The real plaintiffs in this case were Gerald and Bert Buckley. The decision in this case gives people in their position (people who agree to a property division and are later motivated to recant) options which are hardly justifiable on equitable principles. They can permit securities to be transferred and sold by a "de facto distributee" who honestly believes he owns them. In this case, Gerald actually induced Lucile to do so. They then wait, as Bert and Gerald did here, until the securities

appreciate or depreciate. If the securities appreciate, action is brought against the issuer to replace the securities. If the securities depreciate, action is brought against the distributee to disgorge the price even though the tax on it may already have been paid.

We submit that the only remedy which should be afforded the plaintiff in this case is recovery of the improperly transferred stock. This is exactly what the estate would have been required to hold for distribution if the certificates had never been transferred.

CONCLUSION

The arguments here stated relate to issues raised by the briefs. We believe these issues deserve more complete and careful consideration than the decision reflects. In addition, although Appellant did not previously

raise the issue, we urge, as a basis for reconsideration, that the procedures of Appellant's appointment were fatally defective for the reasons stated in Justice Ellett's dissent.

Respectfully submitted,

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