

2005

Marian B. Boulton, David Boulton, and Steven Boulton v. Carl H. Bronn : Brief of Appellant

Utah Court of Appeals

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MARIAN B. BOULTON, DAVID BOULTON,
and STEVEN BOULTON,

Plaintiffs-Appellants,

Case No. 20050391

VS.

CARL H. BRONN, Alternate Trustee of
 "THE ALICE MAY HUGHES BRONN TRUST")
 and CARL H. BRONN, Individually,

Defendants-Appellees.

BRIEF OF APPELLANTS

APPEAL FROM FINAL ORDER OF THE COURT AWARDING JUDGEMENT
AGAINST PLAINTIFFS FOR NO CAUSE OF ACTION, SECOND DISTRICT
COURT, THE HONORABLE DARWIN C. HANSEN, DISTRICT JUDGE.

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ORAL ARGUMENT IS REQUESTED

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Case No. 20050391

BRIEF OF APPELLANTS

STATEMENT OF JURISDICTION

The jurisdiction of the Supreme Court is pursuant to Section 78-2-2 (j) Utah Code Annotated.

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether a Grantor-Settlor Trust was revoked in parts as parcels of land deeded in trust were sold, where the trust was created in 1979 and the settlor in the grantor-type trust deeded 3 parcels of unimproved, unproductive acreage to the trust. The document did not provide that any sale thereof would result in a revocation of the trust as to the portions sold. Beginning in 1988, the settlor as principal trustee began selling portions of

the property in some 20 transactions over a 12 year period wherein she ordered the title companies to make direct deposits to existing accounts in her individual name in banks and investment brokers. The main issue is whether the sale of each portion revoked the trust as to that portion because the money was deposited into her individual accounts and not into the trust account, and as such is clear and convincing evidence of her intent to revoke. This issue was preserved in the record at R 180, 83 and TR 150, 151, 159, 166.

Determinative Law: Internal Revenue Service Code Sections 671 through 678, and IRS Instructions Form 1041; Section 75-7-605(3)(b)(ii) Utah Code Annotated; Restatement of Law of Trusts, Second, Section 202 and 33oi; Banks v. Means, 52 P.3d 1190 (Utah 2002); Estate of Flake, 71 P.3d 589 (Utah 2003); In the Matter of the Estate of West, 948 P.2d 351 (Utah 1997); Perronoud v. Harmon, 8 P.3d 293 (Utah App. 2000). Clear and convincing evidence standard: Greener v. Greener, 212 P.2d 194 (Utah 1949); Jardine v. Archibald, 279 P.2d 454 (Utah 1955).

Standard of Review: In questions of contract interpretation and matters not requiring resort to extrinsic evidence, but based upon documentary evidence, the Appellate Courts accord the trial courts interpretation no presumption of correctness. Issues of law (conclusions of law) are reviewed for correctness. See Zions First National Bank v. Nat. Am. Title Ins., 749 P.2d 651 (Utah 1988), Fairbourn Commercial v. American Housing, 94 P.3d 292 (Utah App. 2004).

2. Whether vested interests of remainderman beneficiaries are divested by the act

of the principal trustee life beneficiary's deposits of proceeds of sales or trust property into her individual account, and whether remainderman beneficiaries can follow the proceeds of sales of real property to funds received by the husband of the decedent as an intestate heir where the husband is also designated in the 1979 trust as an alternate trustee and a person entitled to one-half of the trust assets upon death of the settlor-trustee. This issue was preserved in the Record at R 86, and TR 160, 151, 166, 168.

Determinative Law: Acott v. Tomlinson, 9 Utah 2d 71, 337 P.2d 720 (Utah 1959), 2 Scott on Trust 203 (2d Ed. 1956), Bogert Trusts Section 921, p. 428, 1995 Ed.

Standard of Review: Issue of law are reviewed for correctness. See Zions First National Bank v. Nat. Am. Title Ins., 749 P.2d 651 (Utah 1988), Fairbourn Commercial v. American Housing, 94 P.3d 292 (Utah App. 2004).

3. Whether the trial court's findings based solely upon written materials and involving no assessment of witness credibility are subject to de novo determination of facts on appeal without deference to the trial court's findings.

Determinative Law: In re Infant Anonymous, 760 P.2d 916 (Utah Ct. App. 1988), Bailey v. Call, 767 P.2d 138 (Utah Ct. App. 1989).

Standard of Review: Appellate Court reviews the documents de novo without deference to the trial court.

DETERMINATIVE STATUTES, RULES AND REGULATIONS

a. Statute: Section 75-7-605(3)(b)(ii):

(3) The settlor may revoke or amend a revocable trust:

(a) by substantially complying with a method provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(ii) any other method manifesting clear and convincing evidence of the settlor's intent.

b. Instructions for Form 1041 pursuant to Internal Revenue Code Sections 671 through 678 at page 4 for the year 2000:

Special Filing Instructions for Grantor Type Trusts and Pooled Income Funds

Grantor Type Trusts

A trust is a grantor trust if the grantor retains certain powers or ownership benefits. This can also apply to only a portion of a trust. See Grantor Type Trusts on page 10 for details on what makes a trust a grantor trust.

In general, a grantor trust is ignored for tax purposes and all of the income, deductions, etc., are treated as belonging directly to the grantor. This also applies to any portion of a trust that is treated as a grantor trust.

(Addendum #3).

Apparently Congress and the Internal Revenue Service recognized the necessity of a simple and convenient method for the settlor of a grantor type trust to deal with trust income as an individual rather than as a fiduciary who would otherwise be required to file Form 1041, the U. S. Income Tax Return for estates and trusts. This should not result in an unwary revocation and disruption of an estate plan.

STATEMENT OF THE CASE

A. Nature of the case.

This is a civil action filed by blood relatives of a decedent who are vested remaindermen of a grantor-type revocable trust against the surviving husband of the decedent, who is also designated as Alternate Trustee of the Trust, to recover one-half of the proceeds received by the decedent as trustee of her revocable trust from sales of real property deeded to the trust.

B. Course of proceedings and disposition in the trial court.

Trial was held before the trial court sitting without a jury, and consisted of review of documentary exhibits offered and received in evidence and some limited testimony offered by two witnesses for the defense relative to their receipt of trust funds for management for the decedent. The court made findings consistent with claims of the plaintiffs, but rendered conclusions of law that the trust had been revoked in portions as the decedent trustee deposited proceeds she received as Trustee into accounts in her own name, and she died intestate. The trial court issued an order dismissing the complaint with prejudice.

STATEMENT OF RELEVANT FACTS

Appellants begin by adopting the following summary of facts found by the trial court:

On April 5, 1979, Alice May Hughes Bronn established an inter vivos trust. She was the settlor, the sole trustee, and the beneficiary. She reserved unto herself the right

to, “use, transfer, contract to sell, encumber, mortgage, convey, and in every way deal in and with the said real property, and any other real or personal property transferred to or held by the trust, without notice to or consent from any person, and to modify, amend, or revoke the trust, in whole or in part, in any manner, at anytime.”

The trust instrument named Plaintiffs as contingent beneficiaries for one-half of the corpus and Defendant, Carl H. Bronn, Alice’s husband of some 60 years, for one-half, as of the death of the settlor, Alice May Hughes Bronn.

The trust was funded by separate parcels of land, all located in Davis County, Utah, as follows: Parcel 1, 29 acres, more or less; Parcel 2, a small tract of land not involved in litigation; Parcel 3, subdivided into Plats A and B, entitled the Hillside Subdivision, containing 19 separate lots.

Parcel 3 was sold by lot naming the grantor as Alice May Hughes Bronn, trustee of the Alice May Hughes Bronn Trust. The conveyances occurred between September 27, 1998 and April 17, 1992. Monies paid for each purchase were funneled through Security Title Company. Funds were payable to the trust, but were directed by Alice May Hughes Bronn, as trustee, to be deposited into her personal bank account with First Security Bank, located in Utah. That account was set up in her name only, without reference that the funds were trust assets. The total amount paid was \$241,161.75.

Parcel 1 was sold June 22, 2000. Bonneville Title Company received the purchase price and drew a check to Alice May Hughes Bronn, trustee, in the amount of

\$300,349.26. The settlement statement provided that the funds were to be deposited into the Alice May Hughes Bronn personal account with First Security Bank.

Part of the funds from the personal account of Alice May Hughes Bronn were invested by her with Merrill Lynch and part with Putnam Investment in her own name and not as trustee.

Sometime during this period, Alice May Hughes Bronn and her husband, Carl Bronn, moved from Utah to Arlington, Virginia. While there they were importuned by a representative of First Union National Bank to consolidate each of their respective investments with the bank under an instrument entitled Trust Agreement, naming Alice May Bronn grantor, and First Union National Bank Private Capital Management Personal Trust Administration as trustee. Alice May Hughes Bronn agreed and signed the document on October 16, 2000. She was to receive convenient installments as she directed with the balance being paid to her estate at her death.

The document was signed by Alice May Hughes Bronn at the Bronn home in Virginia. Three representatives of the bank witnessed her signature: James Roque; Glenda Briscoe; and Molly Carr. Mr. Roque and Ms. Briscoe appeared in court and testified that they each believed Alice May Hughes Bronn understood the nature of the transaction. Mr. Roque had theretofore met with the Bronns several times as the salesperson importuning the Bronns to accept the bank's management services. Mrs. Briscoe met Alice May Hughes Bronn on the date of signing for the first time and spent

approximately one hour with her. Each testified that the trust management document was reviewed with Alice May Hughes Bronn, that she appeared to understand the terms, and that she voluntarily signed the document.

Thereafter, steps were taken to consolidate the investment in Alice May Hughes Bronn's name. That includes Merrill Lynch, Putnam, and First Security Bank in Utah. Carl Bronn assisted First Union Bank in that effort.

First Union Bank was not aware of the 1979 trust concerning Parcels 1, 2, and 3 in Utah until sometime in March of 2001. Mr. Roque discovered the document when he was going through some of the Bronns' records, while he was in their home assisting with payment of bills, opening mail, and otherwise providing financial services. At the time, both Alice May Hughes Bronn and Carl Bronn were failing due to age, both being approximately 88 years old. At that time Alice May Hughes Bronn needed an independent care giver. Mr. Roque did not believe that she then was competent to understand financial matters, nor was she competent to either change, modify, or enter into other financial arrangements. Alice May Hughes Bronn died June 6, 2001. Her estate was probated in Virginia. The inventory showed a value of \$1,320,629. The Bronns had no children, nor any Wills. Accordingly, Carl Bronn inherited the whole estate rather than one-half of the estate as prescribed under the 1979 trust. As a consequence, Plaintiffs brought suit against Carl Bronn, alleging that disposition of Alice May Hughes Bronn's estate should be pursuant to the terms of the 1979 trust and not

Virginia law of intestate succession. (End of Findings of the Trial Court).

The trial court's statement in its conclusions of law 5.C., may be considered a finding of fact: "One might conclude that since Alice May Hughes Bronn was considered incompetent by Mr. Roque to understand financial matters in March 2001, when he found a copy of the 1979 trust, that she must have been incompetent on October 16, 2000, when she signed the First Union Management document."

Other facts contained in undisputed documents and pleadings are that Parcel 1 was subdivided into 20 lots and sold by deeds of conveyance between 1998 and 1992, wherein all deeds were signed by Alice as Principal Trustee of the Alice May Hughes Bronn Trust. The first four sales proceeds were deposited pursuant to Alice's direction to the title company into her existing account at Davis County bank, Farmington, Utah. The next 3 sales were similarly deposited in the same bank which became First Security Bank. Beginning on December 20, 1990, the next six sales were directed to be mailed to Alice's account with Merrill Lynch investment broker. A "pay off" check dated September 1991 for \$21,438.63 was made payable to "Alice May Hughes Bronn, Trustee." The last transaction was a check to "Alice May Hughes Bronn" for \$5,150.45.

All of the foregoing sales were documented by exhibits received into evidence as Exhibits 7-1 through 7-17, and deeds of conveyances by Alice as Trustee, Exhibits 7B-1 through 7B20.

Plaintiffs'/Appellants' Exhibit 12 are documents of Bonneville Title Company,

Inc. relating to the sale of the 29 acre parcel, and a check of Bonneville Title dated June 30, 2000 in the sum of \$300,349.26 made payable to “Alice May Hughes Bronn, Trustee” and directly deposited into her First Security Bank Account in Farmington, Utah. The 1099 Tax Reporting Form showed the Seller to be “Alice May Hughes Bronn Trust,” with Alice’s social security number 572 22 2172 which form was signed by Alice May Hughes Bronn Trustee of the Alice May Hughes Bronn Trust.

On October 16, 2000, Alice signed a trust management agreement with First Union Bank in Arlington, Virginia (P Ex 9). On December 14, 2000, pursuant to a telephone call from her husband Carl and a bank officer in Virginia to the Farmington bank, the sum of \$299,758.23 was transferred from Alice’s account to the trust management account of First Union Bank.

The trial court’s findings are consistent with the foregoing statement, however, the trial courts conclusions of law were that the 1979 Trust contained no specific provisions for the manner of amending or revoking the Trust and that Alice’s intent to revoke should be considered under Utah Code Annotated Section 75-7-605(3)(b)(ii) which provided for revocation or amendment by “(ii) any other method manifesting clear and convincing evidence of the settlor’s intent.”

There was no other evidence as to Alice’s intention as Grantor-Settlor to amend or revoke the 1979 Trust other than the deposit of the sales proceeds into her personal bank accounts and investment broker accounts. Alice died without a will and her estate

inventoried at a value of \$1,320,629.00 passed to her husband, Carl, by intestate succession.

Carl is now a Conservatee in California and his present estate is shown by Plaintiffs' Exhibit 17, to approximate \$3,000,000.00 which is being contested by a brother and nieces. Said Exhibit 17 also provides information including a letter filed in the California conservatorship case to William E. Brown, a brother of Carl H. Brown, wherein he states:

What I don't understand is that in previous objection to the petition was the attorney's declaration that Carl does not need a conservator, but suddenly he needs one. His health is relatively good. The mentioning of taking prescription drugs to improve his memory, or even retain what he has, is more of a ploy than a solution. Carl is 92 years of age, and I have had Doctors tell me that they will offer to his age group or even my age group but doubt that any noticeable change will occur prior to our demise. Carl's wife took aricept before it was placed on the market; also took another expensive prescription. If there was any change it was imperceptible; and why slow down an illness when it will merely make one linger longer in an highly undesirable state?

Other facts admitted by the pleadings are that Marian B. Boulton, also known as Marian Backman Boulton (Marian) is a resident of Bountiful, Davis County, Utah. Marian is the nearest surviving relative of Alice. Marian's mother, Mary Foxley Backman, is a half-sister of Alice. Marian was raised from infancy by the father and mother of Alice, David and Alice Foxley Hughes, at 413 South 200 East Farmington, Utah in the same household as Alice and as part of the same family, until Marian married at age 25.

Alice inherited several parcels of real property in Farmington, Utah from her parents. Three of such parcels were conveyed by Alice to “The Alice May Hughes Bronn Trust” (The Trust), dated April 5, 1979, at Bountiful, Utah. The Trust was recorded in the office of the Davis County Recorder, Farmington, Utah, on the 5th day of April 1979, in Book 767, Page 643.

SUMMARY OF ARGUMENT

The 1979 Trust anticipated the sale of the real property in furtherance of trust purposes and did not constitute a revocation or modification of the trust. This case differs from the appellate decisions which held that a sale of the real property revoked the trust as to the portion sold because in those other cases it was emphasized that there were specific provisions in the trust instruments which stated that the sale or other disposition would constitute, as to such whole or part, a revocation of the trust.

Alice May Hughes Bronn (Alice) sold each portion of the real property as Trustee of the trust, made conveyances as Trustee, and received payments through title companies as Trustee directing the title companies to make direct deposits to her existing bank accounts or investment broker accounts.

As the life beneficiary of a Grantor Type Trust, the trust for income tax purposes is ignored and all income and deductions are treated as belonging to the grantor who is not required to file a fiduciary return or to obtain an Employer Identification Number (EIN) nor to issue a K-1 for beneficiary’s share of income. Accordingly, the deposits to her

individual accounts were a convenience and no indication of intent to modify or revoke the trust.

The Plaintiffs as remaindermen beneficiaries had vested interests which were never divested.

There was no clear and convincing evidence manifesting an intent by Alice to revoke or amend the trust. The terms of the trust do not provide a method of revocation or amendment and the statute and rules of law require clear and convincing evidence of the settlor's intent to revoke or modify the trust.

The clear and convincing evidence was that Alice May Hughes Bronn intended that during her lifetime she alone would control the real property and the proceeds from the sales of the real property. There was no evidence that she intended to modify or revoke the 1979 Trust by continuing to control the proceeds from the sales of the real property.

Alice May's failure to deposit proceeds from sales of the real property into accounts in the name of the Trust was a non-act, not an intentional act to modify or revoke the Trust.

ARGUMENT

POINT I: THE 1979 TRUST ANTICIPATED THE SALE OF TRUST REAL PROPERTY IN FURTHERANCE OF TRUST PURPOSES AND DID NOT CONSTITUTE REVOCATION OR MODIFICATION OF THE TRUST.

The Alice May Hughes Bronn Trust of 1979 is much different from the trust in

Matter of Estate of West, 948 P.2d 351 (Utah 1977). The Bronn Trust did not specify that the sale of the real property would constitute a revocation as was the basis in the West case.

Alice May was the sole beneficiary of the Trust during her lifetime, and her correspondence contained in Plaintiffs' Exhibit #6 clearly showed that the sales were to provide for her lifetime support.

The real property of the Trust is situated east of the Farmington City Cemetery and as real property produced no income other than by development and/or sale. There was no benefit to any beneficiary to hold the real estate, pay taxes, and receive no income. Also, paragraph 4 of the Trust for the benefit of the contingent beneficiaries would require sale of the real property in order for Carl Bronn "to have distributed to him one-half of the trust estate for his exclusive use, ownership and benefit." It would be unlikely for him to receive his share without a partition by sale, otherwise his "exclusive use" would be useless without benefit.

The said paragraph 4 also provides, "The remaining one-half shall be held in trust to pay or distribute annually the income from said one-half to Marian B. Boulton for life with the remainder to her sons, David and Steven, equally. . . ." Again, the only practical method of such division and use would be the sale of the real property to provide the source of income. Alice May certainly did not intend that her income and that of the contingent beneficiaries would come from rentals or other use of that mountain-side

property.

The significant and controlling provisions in the West case were emphasized by italics in the decision:

[3] Paragraph 5 of the trust document provides:

We reserve unto ourselves the power and right at any time during our lifetime to amend or revoke in whole or in part the trust hereby created without the necessity of obtaining the consent of any beneficiary and without giving notice to any beneficiary. *The sale or other disposition by us of the whole or any part of the property held hereunder shall constitute as to such whole or part a revocation of this trust.*

West, 948 P.2d at 354. The Court concluded: “Because his conveyance of the property out of the trust as the sole trustee worked a termination of the trust (paragraph 5), no trust, existed at his death, and the children’s contingent interest in the terminated trust avails them nothing.” Id. at 356.

Many, if not most Settlers create trusts to avoid probate. They don’t usually anticipate the thwarting of that purpose by successors who divert the assets to probate proceedings. Alice’s husband received the trust assets through probate as an intestate estate. Transformed trust assets follow the trust as held in Acott v. Tomlinson, 9 Utah 2d 71, 76; 337 P.2d 720 (Utah 1959): “A trustee is chargeable with responsibility for the res of the trust and any increase therein, as well as for any property or proceeds into which it is transformed and which supplant it.” (The opinion footnotes 2 Scott on Trusts 203 (2d Ed. 1956). Also to this effect is Bogert Section 921, page 428, 1995 Ed.).

Also, Townsend v. Raniew Nat. Bank, 751 P.2d 1214 (Wash.App. 1988) at page

1216 states: “Of course trust property does not lose its character by conversion into funds, other property or investments.” (Citing other authorities including Bogert).

The Defendants cited to the trial court the West case that a sale would revoke the trust and in addition, cited the Utah Court of Appeals case of Perrenoud v. Harman, 8 P.3d 293 (Utah App. 2000). However, the defendants failed to state what the court stated in paragraph 9 of the opinion on page 295 that, “Paragraph 3 of the Thurber Trust is identical to paragraph 5 of the trust in *West* and states: ‘*The sale or other disposition by us of the whole or any part of the property held hereunder shall constitute as to such whole or part a revocation of this trust.*’” No such provision was contained in the 1979 Bronn Trust.

In the Perrenoud case, it was the sale which revoked the trust to the house because the trust so provided. The surviving widow who sold the house under a note for installment payments, made a will giving the note to her own children to the exclusion of the children of the deceased husband who would have benefitted from the trust if not revoked. Thus, in absence of a trust provision that sale of the property would revoke the trust, a sale by the widow would not have revoked the trust as to the children of the deceased husband because they would have shared in the installment note which became substituted for the house. It was the emphasized provision of the trust which revoked the trust by sale of the house. In absence of that provision there would be no revocation, and the sale by the widow and her bequeath of the proceeds to her own children would not

have prevailed. The widow sold the property and retained the note in August 1992, and she presumably kept all the installment payments until her death in 1996. The Perrenoud opinion quoted from the West case that while “it is not clear that the surviving settlor may revoke the trust, the surviving trustee clearly may work a revocation by selling or disposing of the property.” Perrenoud, 8 P.3d at 295 (second column).

The Court in West further explained the statement that though it was not “clear” that the surviving settlor may revoke the trust, it was clear that the surviving trustee may work a revocation by sale stating: “The sale or disposition of the trust property can be accomplished only by the trustee(s) in whom the legal title resides. Any power granted to Herschel and Hazel as trustees could be exercised by him unilaterally after the death of Hazel.” West, 948 P.2d at 354, comment [4].

Therefore the disposition of the house by Herschel to his second wife was accomplished by Herschel as trustee, not as settlor.

Similarly, in the Bronn case, the property was sold by Alice as trustee, not as settlor. The Utah Uniform Trust Code Section 75-7-605 (3) and (4) states:

- (3) The settlor may revoke or amend a revocable trust:
 - (a) by substantially complying with a method provided in the terms of the trust; or
 - (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:
 - (i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or
 - (ii) any other method manifesting clear and convincing evidence of the settlor’s intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

Alice clearly could sell the tracts and receive the money as trustee. There is no evidence that Alice was acting as settlor in any subsequent dealing with the proceeds, and certainly no clear and convincing evidence that the deposits of proceeds into accounts held in her individual name were acts done by Alice as settlor manifesting an intent to revoke or amend the trust.

The retention of sale proceeds by Alice in her own name was consistent with her being the “sole acting trustee and beneficiary,” which is better than if instead of depositing the proceeds into bank or bond accounts and investment broker accounts, she had placed the money in her home safe or shoe box. Alice died intestate and as such did not bequeath the proceeds in contradiction or violation of the Trust and continued to hold the money as Trustee.

Intent

Analysis of the intention of Alice with respect to disposition of her estate should begin with review of the provisions of the 1979 Trust. In 1979, the objects of her bounty were clearly her husband, Carl, for one-half and the remaining one-half for her nearest blood relatives, the Plaintiffs. There was no evidence that the relationship of Alice to her relatives changed during her lifetime. There was no evidence that she desired Carl to inherit her entire estate, and the reasonable presumption is that she knew he had assets in his own name equal to hers (his estate was stated in the conservatorship to be

\$3,000,000.00) and Carl's heirs would be his brother and nieces. There was no evidence that Alice ever considered her husband's brother and nieces objects of her bounty to induce her to revoke the 1979 Trust.

Other reasonable presumptions as to Alice's intent in preserving the 1979 Trust are that an important purpose of such a trust is to avoid probate similarly as the Court stated in West that it appeared "that the purpose of this form-book trust document may have been simply to avoid probate." West, 948 P.2d at 354. The 1979 Trust was not the typical form-book trust and as such was more specifically designed to avoid probate and to facilitate a definite plan for liquidation of real property in a manner to provide first for the needs and uses of Alice and then to distribute through the Trust the remainder to the objects of her bounty over a course of years.

Alice's intent in retaining proceeds sales in investments in her own name are consistent with the provisions of the Trust that she "shall be the Principal Trustee and as such shall be the sole acting trustee and beneficiary of this trust with the power and right to use, transfer, contract to sell, encumber, mortgage, convey and in every way deal in and with the said real property and any other real or personal property transferred to or held by the Alice May Hughes Bronn trust (The Trust)" None of the listed powers and rights were violated by her re-investment of proceeds of sales of real property of the trust and were not indicated to constitute a revocation of the Trust either as to herself or the vested remaindermen. If she had intended revocation she could well have specifically

stated so in advance of each or any of some 20 transactions.

The last transaction, the sale of the 29 acre tract, closed through Bonneville Title Company, is evidenced by Plaintiffs' Exhibit 12. Page 1 of Exhibit 12 is the check from Bonneville dated 6-30-00 in the sum of \$300,349.26, payable to the order of "Alice May Hughes Bronn, Trustee." Page 2 is the commitment for title insurance which recites that title to the land in fee simple is vested in "Alice May Hughes Bronn as Principal Trustee, and unto Carl H. Bronn as Alternate Trustee; and unto Marian B. Boulton and George K. Fadel as Successor Trustees." Page 4 is a letter from Bonneville's escrow officer addressed to Alice May Hughes Bronn dated May 15, 2000, enclosing a Settlement, Warranty Deed, Escrow Instructions and a 1099 S Tax Reporting Form to be completed by Alice and returned "along with a Copy of The Alice May Hughes Bronn Trust (this is very important for us to verify proper transfer of title. . .)." Pages 8 and 9 are Escrow Instructions dated 5-1-00 signed by "Alice May Hughes Bronn, As Principal Trustee of The Alice May Hughes Bronn Trust." Page 10 shows a receipt issued by First Security, Layton Hills Branch dated 7-05-2000 showing a deposit of \$300,349.26 to account #1271006510.

Page 11 is a letter from Armstrong Law Offices, Brent R. Armstrong dated May 12, 2000, addressed to Bonneville Title Company re "Sale by Alice May Hughes Bronn Trust to U. S. D. S. Investment Group. L. C. wherein Mr. Armstrong listed 7 comments of which comments 5(c) and 7 are especially relevant and important. Comment 5 (c) states:

“The ‘signature block’ for the Seller should be added on page 6 to clearly evidence that Seller is to be signing in the capacity of Trustee of the Bronn Trust. This should be similar to the ‘signature block’ you proposed on the Warranty Deed.” Comment 7 states: “We have marked up the 1099S Tax Reporting Form to reflect that the Seller is a trust, that there is only one seller (no ‘additional’ seller) and that Carl H. Bronn is not a signatory to the transaction.

Copies of the noted amendments to the 1099S Tax Reporting form are at pages 14 and 15, wherein the corrected Form 1099S is signed by “Alice May Hughes Bronn As Principal Trustee of The Alice May Hughes Bronn Trust.”

The correspondence and directions of Attorney Brent R. Armstrong are especially significant in demonstrating that he as attorney for Alice May Hughes Bronn Trustee was emphasizing that the transaction be solely reflected as a Trust transaction. Also, had Alice May intended to modify or revoke the Trust, she had ample opportunity to request Mr. Armstrong’s assistance or advice on such matter. Instead, Alice May received the proceeds as Trustee and ultimately deposited the same with First Union Bank as a trustee under a management trust for Alice May Bronn, Exhibit 9, dated October 16, 2000.

The 1979 Trust was not revoked by said sales. Alice died intestate. In both West and Perrenoud, the surviving settlor-trustee disposed of the property by wills which constitute evidence of intent to revoke the trusts. There were no such documents showing an intent to modify the interests of the remaindermen beneficiaries in the Bronn Case, nor

any other clear and convincing evidence that Alice intended to revoke the 1979 Trust.

Clear and Convincing Evidence

In the case of Jardine v. Archibald, 3 Utah 2d 88, 94, 279 P.2d 454 (Utah 1955)

this Court quoted from its previous opinion in Greener v. Greener.

[7] In Greener v. Greener, 166 Utah 571, 202 P.2d 194 on pages 204-205, this court speaking through Mr. Justice Wolfe in defining what quantum of proof is needed to be clear and convincing said:

“ * * * That proof is convincing which carries with it, not only the power to persuade the mind as to the probable truth or correctness of the fact it purports to prove, but has the element of clinching such truth or correctness. Clear and convincing proof clinches what might be otherwise only probable to the mind. * * *

“But for a matter to be clear and convincing to a particular mind it must at least have reached the point where there remains no serious or substantial doubt as to the correctness of the conclusion. * * *”

The undisputed facts supported by documentary evidence reviewed herein are clear and convincing that the retention by Alice of trust funds in her own name during her lifetime were evidence that she dealt with sale of the property and retention of the funds in manners pursuant to, and consistent with the terms of the Trust, and there was no evidence of an intent to revoke the Trust.

POINT II: THE CONTINGENT BENEFICIARIES HAD VESTED INTERESTS
WHICH WERE NEVER DIVESTED

In the Estate of West, 948 P.2d 351, relied upon by the defendants, the Trust provided that the settlors declared they held said real property therein on the death of the survivor for use and benefit of three named children. The Supreme Courts opinion added,

“The children’s vested rights are subject to divestiture and will not ripen until the death of the surviving settlor.” *Id.* at 356. The significance of this latter quotation is that the interests of the children were vested, and were it not for the emphasized provision, that sale would constitute a revocation, the interest would not have been divested.

A subsequent case decided by the Supreme Court, *Banks v. Means*, 52 P.3d 1190 (Utah 2002), affirmed the children’s entitlement to their vested interests as against an aunt who claimed under an amendment, which the Court held did not constitute a revocation of the original trust and that a complete revocation was required to divest the beneficiaries of their vested interests. *Id.* at 1193. The Court footnoted a quotation from *Blacks Law Dictionary* 1557 (7th ed. 1999) as follows:

A “vested” interest is something that had become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute. . . . An interest may be vested, even where it does not carry a right to immediate possession, if it does confer a fixed right of taking possession in the future.

The Bronn 1979 Trust was more than a mere acknowledgment of a trust by a settlor. It was a conveyance, stating Alice May, Grantor, “do [es] hereby bargain, sell, convey, warrant and transfer the tracts of land . . . unto [her]self, Alice May Hughes Bronn as Principal Trustee; and unto Carl H. Bronn as Alternate Trustee; and unto Marian B. Boulton and George K. Fadel . . . as Successor Trustees; and unto Zions First National Bank Trust Department as substitute to either Successor Trustee for the uses and purposes herein set forth.”

Title thus became vested in all of the above-named, subject to Alice May being the Principal Trustee and sole acting trustee and beneficiary for life. She, at no time, modified, amended or revoked the conveyance to herself and other alternate or successor trustees. Nothing she did in selling real property or depositing proceeds were inconsistent with her lifetime entitlement and the entitlement of the surviving beneficiaries.

In another later Supreme Court decision, In Re Estate of Flake, 71 P.3d 589 (Utah 2003), the Court stated that a trustee has exclusive control of the trust property, subject only to the limitation imposed by law or the trust instrument. Once the settlor has created the trust, he is no longer the owner of the trust property and has only the ability to deal with it as is expressly reserved to him in the trust instrument. The court added:

However, as is the case with the 1987 Trust Agreement, if the Settlor does not specify the method of modification, then “The power may be exercised by any method which sufficiently manifests his intention to modify the trust”. . . . In interpreting the terms of a trust, the proper focus of inquiry is the settlor’s intent.

Id. at 594 (citations omitted). The Court also stated: “We held in *Banks* that revocation was required when terminating a vested interest.” Id. at 595.

When Alice May Hughes Bronn died, the proceeds in the 1979 Trust immediately became the property of the remaindermen beneficiaries to be administered by a qualified subsequent trustee. The proceeds passed through the Trust and were not subject to probate. The defendants having received the proceeds without right through probate should be required to account to the subsequent qualified Trustee for administration pursuant to terms of the Trust.

POINT III: ALICE MAY HUGHES BRONN DID NOT CHANGE HER STATUS FROM THAT OF A TRUSTEE BY DEPOSITING PROCEEDS FROM SALE OF TRUST PROPERTY INTO HER INDIVIDUAL BANK ACCOUNTS AND INVESTMENT ACCOUNTS.

When Alice May Hughes Bronn sold the parcels of real property, she did so as Trustee of the 1979 Trust. Her direction to have proceeds deposited in an account in her name without designating that she was receiving the deposit as Trustee and not as a individual does not change the fact that she was dealing with trust funds and was continuing to hold the funds as Trustee.

This analysis is supported by the converse of the holding of this Court in the case of TWN, Inc. v. Michel, 66 P.3d 1031 (Utah App. 2003). In TWN, Inc., one Christenson received a tax deed in his name as grantee “Richard Christenson” and later conveyed the tract as grantor identified in the deed as “Richard A. Christenson, Trustee.” TWN, Inc., the plaintiff, contended that the grantee of the deed received nothing because Christenson was not in fact a trustee. This Court, reversed summary judgment which was granted plaintiff by the trial court, holding that the word “Trustee” was nevertheless just describing the individual, Richard Christenson; and not restricting his capacity to that of a trustee apart from being an individual. This Court held:

[2] para 8 Although Defendants argue in general terms that the unexplained appearance of the word “trustee” creates ambiguity on the face of the deed from Mr. Christenson to Zions Bank, the thrust of their argument brings them within the doctrine known as “*descriptio personae*.” This term is defined as “the use of a word or phrase merely to identify or point out the person intended and not as an intimation that the language in connection with which it occurs is to apply to him only in the technical character which might appear to be indicated by the word.”

Id. at 1033.

Several other Utah appellate decisions were cited in support of the “descriptio personae” doctrine.

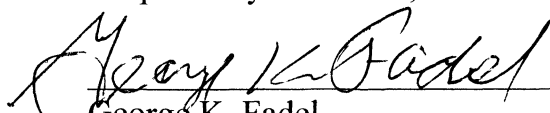
There was no evidence that Alice May Hughes Bronn changed her status from that of a Trustee to that of an individual disregarding the trust merely by subsequent deposits and investments which did not continue her name as Trustee.

CONCLUSION

The Order of the trial court should be reversed, and the cause remanded to the trial court to grant judgment to the plaintiffs for amounts due under the 1979 Trust, as determined by an accounting.

Dated this 6th day of July, 2005.

Respectfully submitted,


George K. Fadel
Attorney for Plaintiffs-Appellants

Certificate of Mailing

I certify I mailed two copies of the foregoing to Mr. Bart J. Johnsen, Attorney for the Appellees, on this ___ day of July, 2005, addressed to 50 South Main Street, Suite #1600, S. L. C., Utah, 84145-0340.


George K. Fadel

APPELLANTS' ADDENDUM

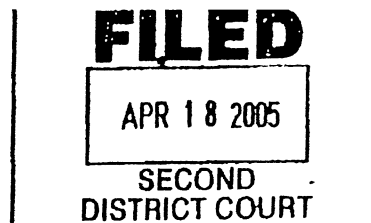
TRIAL COURT ORDER

1979 TRUST DOCUMENT


EXCERPT FROM INTERNAL REVENUE SERVICE INSTRUCTIONS, FORM 1040

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Bart J. Johnsen, Esq. (7068)
VAN COTT, BAGLEY, CORNWALL & McCARTHY
Attorneys for Defendants
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340
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Facsimile: (801) 534-0058



IN THE SECOND DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>MARIAN B. BOULTON, DAVID BOULTON, and STEVEN BOULTON,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CARL H. BRONN, Alternate Trustee of "THE ALICE MAY HUGHES BRONN TRUST" and CARL H. BRONN, Individually,</p> <p>Defendants.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p> <p>Case No. 030700067</p> <p>Judge Darwin C. Hansen</p> <p>Findings of Fact, Conclusions of Law, and Order</p>  <p>VD18411342 030700067 BRONN,CARL H</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Plaintiffs' Complaint came for trial before the Honorable Judge Darwin C. Hansen in his courtroom on March 22 and 23, 2005. Based upon the testimony of the witnesses, the evidence presented, and good cause appearing therefor, the Court now makes and enters its,

FINDINGS OF FACT

i. On April 5, 1979, Alice May Hughes Bronn established an inter vivos revocable trust. She was the settlor, the sole trustee, and the beneficiary. She

reserved unto herself the right to, "use, transfer, contract to sell, encumber, mortgage, convey, and in every way deal in and with the said real property, and any other real or personal property transferred to or held by the trust, without notice to or consent from any person, and to modify, amend, or revoke the trust, in whole or in part, in any manner, at anytime."

2. The trust instrument named Plaintiffs as contingent beneficiaries for one-half of the corpus and Defendant, Carl H. Bronn, Alice's husband of some 60 years, for one-half, as of the death of the settlor, Alice May Hughes Bronn.

3. The trust was funded by separate parcels of land, all located in Davis County, Utah, as follows: Parcel 1, 29 acres, more or less; Parcel 2, a small tract of land not involved in this litigation; Parcel 3, subdivided into Plats A and B, entitled the Hillside Subdivision, containing 19 separate lots.

4. Parcel 3 was sold by lot naming the grantor as Alice May Hughes Bronn, trustee of the Alice May Hughes Bronn Trust. The conveyances occurred between September 27, 1988, and April 17, 1992. Monies paid for each purchase were funneled through Security Title Company. Funds were payable to the trust, but were directed by Alice May Hughes Bronn, as trustee, to be deposited into her personal bank account with First Security Bank, located in Utah. That account was set up in her name only, without reference that the funds were trust assets. The total amount paid was \$241,161.75.

5. Parcel 1 was sold June 22, 2000. Bonneville Title Company received the

purchase price and drew a check to Alice May Hughes Bronn, trustee, in the amount of \$300,349.26. The settlement statement provided that the funds were to be deposited into the Alice May Hughes Bronn personal account with First Security Bank.

6. Part of the funds from the personal account of Alice May Hughes Bronn were invested by her with Merrill Lynch and part with Putnam Investment in her own name and not as trustee.

7. Sometime during this period, Alice May Hughes Bronn and her husband, Carl Bronn, moved from Utah to Arlington, Virginia. While there they were importuned by a representative of First Union National Bank to consolidate each of their respective investments with the bank under an instrument entitled Trust Agreement, naming Alice May Bronn grantor, and First Union National Bank Private Capital Management Personal Trust Administration as trustee. Alice May Hughes Bronn agreed and signed the document on October 16, 2000. She was to receive convenient installments as she directed with the balance being paid to her estate at her death.

8. The document was signed by Alice May Hughes Bronn at the Bronn home in Virginia. Three representatives of the bank witnessed her signature: James Roque; Glenda Briscoe; and Molly Carr. Mr. Roque and Ms. Briscoe appeared in court and testified that they each believed Alice May Hughes Bronn understood the nature of the transaction. Mr. Roque had theretofore met with the Bronns several times as the salesperson importuning the Bronns to accept the bank's management services. Mrs. Briscoe met Alice May Hughes Bronn on the date of signing for the first time and spent

approximately one hour with her. Each testified that the trust management document was reviewed with Alice May Hughes Bronn, that she appeared to understand its terms, and that she voluntarily signed the document.

9. Thereafter, steps were taken to consolidate the investment in Alice May Hughes Bronn's name. That includes Merrill Lynch, Putnam, and First Security Bank in Utah. Carl Bronn assisted First Union Bank in that effort.

10. First Union Bank was not aware of the 1979 trust concerning Parcels 1, 2, and 3 in Utah until sometime in March of 2001. Mr. Roque discovered the document when he was going through some of the Bronns' records, while he was in their home assisting with payment of bills, opening mail, and otherwise providing financial services. At the time, both Alice May Hughes Bronn and Carl Bronn were failing due to age, both being approximately 88 years old. At that time Alice May Hughes Bronn needed an independent caregiver. Mr. Roque did not believe that she then was competent to understand financial matters, nor was she competent to either change, modify, or enter into other financial arrangements.

11. Alice May Hughes Bronn died June 6, 2001. Her estate was probated in Virginia. The inventory showed a value of \$1,320,629. The Bronns had no children, nor any Wills. Accordingly, Carl Bronn inherited the whole estate rather than one-half of the estate as prescribed under the 1979 trust. As a consequence, Plaintiffs brought suit against Carl Bronn, alleging that disposition of Alice May Hughes Bronn's estate should be pursuant to the terms of the 1979 trust and not Virginia law of intestate

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succession.

The Court, having made and entered the foregoing Findings of Fact, and with good cause therefor, now makes its,

CONCLUSIONS OF LAW

1. The 1979 trust was revocable by Alice May Hughes Bronn and was subject to being amended or modified. The trust contained no specific provision for such action by her as trustor. Therefore, the Court must consider her intent to revoke, amend, or modify based upon her conduct. Utah Code §75-7-605(3)(b)(ii).

2. Each time Alice May Hughes Bronn, as trustee, sold a tract of land from the trust and deposited the funds into her personal account, she revoked that portion of the trust. As trustee, she, in effect, paid herself as beneficiary of the trust and thereafter could use and transfer those funds as she chose independent of the trust provisions.

3. The fact that Alice May Hughes Bronn treated every sale of land from the trust the same way, that is, depositing the funds from each sale into her personal account and thereafter investing a portion of those funds in Merrill Lynch and Putnam, also in her name, confirms her intent to revoke those funds from the provisions of the 1979 trust.

4. The First Union Bank trust created October 16, 2000 does not fit the typical definition of a trust under Virginia law because the contingent beneficiary is Alice May Hughes Bronn's estate, which is not a legal entity. Arnold, v. Gooobey, 77 S.E.2d

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5. Whether Alice May Hughes Bronn was or was not competent to

A. Whether Alice May Hughes Bronn signed the document. It is clear that she signed the First Union document. Three witnesses confirmed that fact. Whether she understood the legal implication must be determined by her past conduct as compared to the fiscal arrangements with First Union Bank.

B. What were the First Union financial arrangements. First Union was not a typical trust. It was a financial manager only regarding funds transferred from Alice May Hughes Bronn's personal account and other personal investments to the bank for management purposes. The Court concludes that she did understand the transaction because the funds transferred remained in her own name as a personal investment outside the terms of

C. What were the legal implications. One might conclude that since Alice May Hughes Bronn was considered incompetent by Mr. Roque to understand financial matters in March 2001, when he found a copy of the 1979 trust, that she must have been incompetent on October 16, 2000, when she signed the First Union Management document. Even if that were true, it is of no legal consequence because Carl Bronn would have inherited Alice May Hughes Bronn's estate in full, whether the estate monies were still invested as existed prior to October 16, 2000, or after they were deposited with First Union. Thus, the legal consequences would have been the same because those funds were not subject to the 1979 trust when they were deposited in the First Security Bank in Alice May Hughes Bronn's name personally and not as trustee of the Alice May Hughes Bronn trust.

6. The Court does not conclude that the 1979 trust was revoked in total. It may be that Parcel 2 remains in the trust corpus and thus would be still subject to the terms and conditions of the trust. No evidence was presented on this point.

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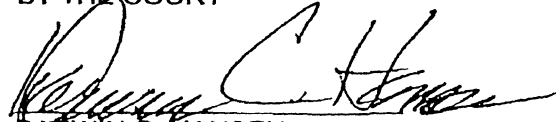
BASED UPON the foregoing Findings of Fact and Conclusions of Law,

It is hereby, **ORDERED, ADJUDGED, AND DECREED:**

1. Defendant is awarded Judgment against Plaintiff for no cause of action.
2. Defendant is awarded costs.

DATED this 14 day of April, 2005

BY THE COURT


DARWIN C. HANSEN
District Court Judge

APPROVED AS TO FORM


GEORGE K. FADEL
Attorney for Plaintiffs

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CERTIFICATE OF MAILING

I hereby certify on this 17th day of April, 2005 I caused a true and correct copy of the foregoing to be served via U.S. Mail, first class postage prepaid, upon the following

George K Fadel
170 West 400 South
Bountiful, Utah 84010

Cynthia L Woene

530950

THE ALICE MAY HUGHES BRONN TRUST
DEED OF CONVEYANCE & DECLARATION

NE 1/4-30 SW 1/4
p7-23-24- Woodland SD

KNOW ALL MEN BY THESE PRESENTS:

That I, ALICE MAY HUGHES BRONN, a resident of Davis County, State of Utah, now sojourning temporarily in Virginia, Grantor, and herein sometimes called Settlor, do hereby bargain, sell, convey, warrant and transfer the tracts of land in Davis County, Utah, described on the attached sheet which bears the signature of the Grantor of even date with this document and which sheet is incorporated herein and made a part hereof as though fully set forth herein, unto myself, ALICE MAY HUGHES BRONN as Principal Trustee; and unto CARL H. BRONN as Alternate Trustee; and unto MARIAN B. BOULTON and GEORGE K. FADEL of Bountiful, Utah, as Successor Trustees; and unto ZIONS FIRST NATIONAL BANK TRUST DEPARTMENT as substitute to either Successor Trustee, for the uses and purposes herein set forth.

1. During the lifetime of the Settlor, the said Settlor, Alice May Hughes Bronn, shall be the Principal Trustee and as such shall be the sole acting trustee and beneficiary of this trust with the power and right to use, transfer, contract to sell, encumber, mortgage, convey and in every way deal in and with the said real property and any other real or personal property transferred to or held by the Alice May Hughes Bronn Trust (The Trust) without notice to or consent from any person, and to modify, amend, or revoke the trust in whole or in part in any manner at any time.

2. Upon the death or adjudicated incompetency of Settlor the order of succession as acting trustee shall be:

- (a) Carl H. Bronn, Alternate Trustee;
- (b) Marian B. Boulton and George K. Fadel, acting jointly as Successor Trustees.
- (c) Zions First National Bank Trust Department as substitute to either or both successor trustees in the event either or both are not qualified to act or continue to act.

3. During her lifetime, the Settlor shall be the sole beneficiary of the trust.

4. Upon the death of Settlor, Carl H. Bronn, if he survives Settlor, shall be entitled to have distributed to him one-half of the trust estate for his exclusive use, ownership and benefit. The remaining one-half shall be held in trust to pay or distribute annually the income from said one-half and one-twentieth of the principal annually of said one-half to Marian B. Boulton for life with the remainder to her sons David and Steven, equally and

Indexed
Entered
On Margin
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DESCRIPTION OF REAL PROPERTY ATTACHED TO THE
ALICE MAY HUGHES BRONN TRUST OF APRIL 5, 1979

The following described tracts in Davis County, State of Utah are conveyed to the ALICE MAY HUGHES BRONN TRUST, to which this document is attached

Parcel 1. All of the Southeast Quarter of the Northeast Quarter of Section 30, Township 3 North, Range 1 East, Salt Lake Base & Meridian, less that portion thereof heretofore conveyed to the Farmington Area Pressurized Irrigation District, described as:

Beginning at the East Quarter Corner of Section 30, Township 3 North, Range 1 East, Salt Lake Base & Meridian, thence running N 0° 41' 00" W along the section line 714.53 feet; thence S 89° 19' 00" W 38 feet to the brow of the hill; thence N 50° 54' 42" W 130.37 feet; thence N 6° 27' 40" W 117.19 feet; thence S 89° 19' 00" W 314.42 feet; thence S 9° 46' W 595 feet parallel with the aqueduct; thence S 1° 55' 11" E 324.84 feet; thence N 89° 47' 10" E 565.35 feet to the point of beginning. Containing 10.68 acres.

Parcel 2. Beginning on an old fence line marking the north side of Section 30, Township 3 North, Range 1 East, Salt Lake Meridian, at a point 374.22 feet West from the Northeast corner of the west half of the Northeast Quarter of Section 30 (Said $\frac{1}{4}$ corner being about 13 feet west of the old fence line earlier marking the said $\frac{1}{4}$ corner line); thence South 151.14 feet; thence West 75 feet; thence North 151 feet to said section line; thence East 75 feet to point of beginning.

Parcel 3. Beginning at the Northeast corner of the West half of the Northeast Quarter of Section 30, Township 3 North, Range 1 East, Salt Lake Meridian, and running thence West 5.67 chains; thence South 2.29 chains; thence West 2.45 chains, more or less, to the boundary established with Farmington City by deed dated February 4, 1976; thence South 0° 29' West 647.44 feet, more or less, along said established line to the North line of a subdivision; thence East along the North line of said subdivision to a point due South of beginning; thence North 12.72 chains to beginning, less that portion heretofore conveyed to others described as:

Beginning at the Northeast Corner of the West half of the Northeast Quarter of Section 30, Township 3 North, Range 1 East, Salt Lake Base & Meridian; and running thence West 374.22 feet along the Section line; thence South 151.14 feet; thence West 237.29 feet to the old fence line; thence South 0° 29' West 175.0 feet along the old fence line and deed line; thence East 626.0 feet, more or less, to the old fence line; thence North 326.14 feet along the old fence line; thence West 13.0 feet, more or less, to the point of beginning. Containing 3.85 acres.

DATED this fifth day of April, 1979.

Alice May Hughes Bronn
Alice May Hughes Bronn

- Was in existence on August 20, 1996,
- Was treated as a domestic trust on August 19, 1996, and
- Elected to continue to be treated as a domestic trust.

See T.D. 8813, I.R.B. 1999-9, 34 (1999-1 C.B. 631) for more information on the court and control tests. See also Notice 96-65, 1996-2 C.B. 232, under which a trust (including a wholly-owned grantor trust) may amend the provisions of the trust in order to meet the new statutory requirements.

A trust that is not a domestic trust is treated as a foreign trust. If you are the trustee of a foreign trust, file Form 1040NR instead of Form 1041. Also, a foreign trust with a U.S. owner generally must file **Form 3520-A**, Annual Information Return of Foreign Trust With a U.S. Owner.

If a domestic trust becomes a foreign trust, it is treated under section 684 as having transferred all of its assets to a foreign trust, except to the extent a grantor or another person is treated as the owner of the trust when the trust becomes a foreign trust.

Special Rule for Certain Revocable Trusts

Section 645 provides that the executor of an estate and the trustee of a qualified revocable trust can elect to treat the trust as part of the estate instead of filing a separate Form 1041 for the trust. The election applies to all tax years of the estate ending after the date of the decedent's death and before the applicable date, as defined below. Once made, the election is irrevocable.

Qualified revocable trusts. A qualified revocable trust for this purpose is any trust or portion of a trust that is treated under section 676 as having been owned by the decedent whose estate is making the election, because of a power in the grantor of the trust to revoke the trust. For this purpose, a power does not include any power in the grantor that is treated as held by the grantor because it is held by his or her spouse.

Applicable date. The applicable date is the:

If the estate is required to file a Federal estate tax return, the date that is 6 months after the date of the final determination of Federal estate tax liability or
If the estate is not required to file a Federal estate tax return, the date that is 3 years after the date of the decedent's death.

Timing the election. You make the election by attaching a statement to Form 1041. The original statement must be attached to Form 1041 filed by the due date (including extensions) for the estate's first tax year. If the original return is filed on time, you may make the election on an amended return filed no later than 6 months after the due date of return (excluding extensions). Write "and pursuant to section 301.9100-2" at

the top of the amended return, and file it at the same address you used for the original return.

If the revocable trust must file a Form 1041 for the tax year ending after the date of the decedent's death, you must attach a copy of the statement to that return.

See Rev. Proc. 98-13, I.R.B. 1998-4, 21 (1998-1 C.B. 370) for details of what you must include in the statement and for additional information on the election.

Bankruptcy Estate

The bankruptcy trustee or debtor-in-possession must file Form 1041 for the estate of an individual involved in bankruptcy proceedings under chapter 7 or 11 of title 11 of the United States Code if the estate has gross income for the tax year of \$6,475 or more. See **Of Special Interest To Bankruptcy Trustees and Debtors-in-Possession** on page 8 for details.

Common Trust Funds

Do not file Form 1041 for a common trust fund maintained by a bank. Instead, the fund may use **Form 1065**, U.S. Return of Partnership Income, for its return. For more details, see section 584 and Regulations section 1.6032-1.

Qualified Settlement Funds

The trustee of a designated or qualified settlement fund must file **Form 1120-SF**, U.S. Income Tax Return for Settlement Funds, rather than Form 1041.

Special Filing Instructions for Grantor Type Trusts and Pooled Income Funds

Grantor Type Trusts

A trust is a grantor trust if the grantor retains certain powers or ownership benefits. This can also apply to only a portion of a trust. See Grantor Type Trusts on page 10 for details on what makes a trust a grantor trust.

In general, a grantor trust is ignored for tax purposes and all of the income, deductions, etc., are treated as belonging directly to the grantor. This also applies to any portion of a trust that is treated as a grantor trust.



The following instructions apply only to grantor type trusts that are not using an optional filing method.

File Form 1041 for a grantor trust unless you use an optional filing method.

If the entire trust is a grantor trust, fill in only the entity portion of Form 1041. **Do not** show any dollar amounts on the form; itself; show dollar amounts only on an attachment to the form. **Do not** use Schedule K-1 (Form 1041) as the attachment.

If only part of the trust is treated as a grantor trust, report on Form 1041 **only** the part of the income, deductions, etc., that is taxable to the trust. The amounts

that are taxable directly to the grantor are shown only on an attachment to the form. **Do not** use Schedule K-1 (Form 1041) as the attachment.

On the attachment, report:

- The name, identifying number, and address of the person(s) to whom the income is taxable;
- The income of the trust that is taxable to the grantor or another person under sections 671 through 678. Report the income in the same detail as it would be reported on the grantor's return had it been received directly by the grantor; and
- Any deductions or credits that apply to this income. Report these deductions and credits in the same detail as they would be reported on the grantor's return had they been received directly by the grantor.

The income taxable to the grantor or another person under sections 671 through 678 and the deductions and credits that apply to that income **must** be reported by that person on their own income tax return.

Example. The John Doe Trust is a grantor type trust. During the year, the trust sold 100 shares of ABC stock for \$1,010 in which it had a basis of \$10 and 200 shares of XYZ stock for \$10 in which it had a \$1,020 basis.

The trust **does not** report these transactions on Form 1041. Instead, a schedule is attached to the Form 1041 showing each stock transaction separately and in the same detail as John Doe (grantor and owner) will need to report these transactions on his Schedule D (Form 1040). The trust may not net the capital gains and losses, nor may it issue John Doe a Schedule K-1 (Form 1041) showing a \$10 long-term capital loss.

Optional Filing Methods for Certain Grantor Type Trusts

Generally, if a trust is treated as owned by **one** grantor or other person, the trustee may choose **Optional Method 1** or **Optional Method 2** as the trust's method of reporting instead of filing Form 1041.

Generally, if a trust is treated as owned by **two or more** grantors or other persons, the trustee may choose **Optional Method 3** as the trust's method of reporting instead of filing Form 1041.

Once you choose the trust's filing method, you must follow the rules under **Changing filing methods** if you want to change to another method.

Exceptions. The following trusts cannot report using the optional filing methods:

1. A common trust fund (as defined in section 584(a)).
2. A foreign trust or a trust that has any of its assets located outside the United States.
3. A qualified subchapter S trust (as defined in section 1361(d)(3)).
4. A trust all of which is treated as owned by one grantor or one other person whose tax year is other than a calendar year.