

2005

Janet S. Perez v. Utah Department of Health, Division of Health Care Financing : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Perez v. Utah Department of Health*, No. 20050895 (Utah Court of Appeals, 2005).
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IN THE UTAH COURT OF APPEALS

JANET S. PEREZ, :
 :
 Petitioner/Appellant, : **APPELLANT'S REPLY BRIEF**
 :
 vs. :
 :
 UTAH DEPARTMENT OF HEALTH, :
 DIVISION OF HEALTH CARE :
 FINANCING, : **Appellate Case No. 20050895-CA**
 :
 Respondent/Appellee. :

PETITION FOR REVIEW OF A FINAL AGENCY ORDER OF THE
UTAH DEPARTMENT OF HEALTH, DIVISION OF HEALTH CARE FINANCING,
BASED ON DECISION OF DOUGLAS JENSEN, HEARING OFFICER

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FILED
UTAH APPELLATE COURTS
APR 03 2006

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ARGUMENT

Respondent's brief simply restates the Agency's position below and notably does not respond to numerous arguments made by Appellant in her opening brief, including:

-the complete lack of any language in the trust naming Mrs. Perez as a beneficiary of the trust.

-the complete failure of the Agency to distinguish between ownership of **the land**, a value held only by the trust, and a lifetime right to use the land, the only value arguably held by Mrs. Perez.

-the complete failure of the Agency to distinguish between the interests of the named beneficiaries under the Trust, whose interests vest after the death of Mrs. Perez, and any interest of Mrs. Perez under the Trust, who clearly cannot have a

beneficial interest like that of the named beneficiaries because she cannot survive herself.

–the complete failure of the Agency to respond to Mrs. Perez’ evidence that a right to use the land for the life of Mrs. Perez has no value.

–the effect of *Section 75-5-503, Utah Code*, not even acknowledged in Respondent’s brief, which clearly limits amendment power under the Trust to Mrs. Perez only, not her successor trustees, Mrs. Perez undisputedly being unable to exercise any such power.

The only argument which appears to respond directly to Appellant’s brief is an analysis of Article V(B) which argues that the “separate estate” language in that paragraph must mean only an estate “which is part of the trust.” Respondent’s brief, p. 8.

Appellant disagrees. The plainest and most probable interpretation of “separate estate” is that this clause was intended to address the possibility that Mrs. Perez would eventually die leaving a valuable separate estate which her successor trustees would have authority to invade, to the point of paying her disability needs “out of all beneficiaries’ shares.” It is much less probable that “separate estate” means a separate estate of Mrs. Perez inside the trust because there is no language in the trust giving Mrs. Perez any “separate estate” in trust property which conflicts with the interests of the named beneficiaries in trust property. Inside the trust, Mrs. Perez has only a valueless lifetime use right. This right expires at her death, at the same time that the rights of the named beneficiaries’ vest. This does not mean that Mrs. Perez has a hidden beneficial interest somewhere in the trust. It simply means that Article V(B) is a general estate

management clause which does not apply because Mrs. Perez has no valuable separate estate.

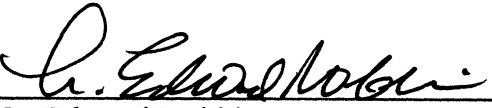
The agency has denied benefits to Mrs. Perez on the basis an alleged valuable interest in the assets of the trust. Given the significance of this decision to Mrs. Perez, is it too much to expect that the agency would at least be able to identify the words in the trust which give Mrs. Perez the value which the agency claims she has? Despite twice briefing and arguing this case, here and below, the agency has failed to do so. The language simply is not there. The argument of the agency that the value must be there somewhere—we don't know where, but somewhere—because of a general estate management clause is an incredible stretch and should not be supported by the court.

At the hearing, Mrs. Perez gave the agency and the “separate estate” clause the benefit of every doubt and presented undisputed evidence that her lifetime use right under the trust was valueless. This is the only right Mrs. Perez has, inside the trust or outside the trust, and it is undisputedly without value.

CONCLUSION

Benefits for Mrs. Perez should be ordered. Oral argument is requested.

DATED this 31st day of March, 2006.

By: 
L. Edward Robbins
Attorney for Petitioner/Appellant

Certificate of Service

I hereby certify that on the 3/2 day of March, 2006, I served the foregoing Appellant's Reply Brief upon the following individuals by depositing two true and correct copies thereof in the U. S. Mails, first class postage fully prepaid, addressed as follows:

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