

1975

John Leach v. Norma B. Anderson And Valley Bank Trust Company : Appellants' Reply Brief

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

JOHN LEACH,

Plaintiff and Respondent,

-vs-

NORMA B. ANDERSON and
VALLEY BANK AND TRUST
COMPANY,

Defendants and Appellants.

Case No.

13808

APPELLANTS' REPLY BRIEF

Appeal from a Judgment of the
Third District Court of Salt Lake County,
Honorable James S. Sawaya, Judge

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Clerk, Supreme Court, Utah

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APPELLANTS' REPLY BRIEF

ARGUMENT

POINT I

RESPONDENT FAILS TO EVEN
ADDRESS THE QUESTION OF
WHETHER MRS. ANDERSON IS
THE SOLE BENEFICIARY OF THE
TRUST.

It is Appellants' position that if in fact Mrs. Anderson did retain certain benefits and uses under the trust, a creditor of Mrs. Anderson has no more rights and can secure no greater benefits under the trust than Mrs. Anderson could herself. This position is supported by the RESTATEMENT OF TRUSTS, 2d §114 and is consistent with the statute in question, UCA 25-1-11. The statute relied on by Respondent declares that "all deeds, gifts . . . made in trust for the use of the person making the same shall be void as against the existing or subsequent creditors of such person." The RESTATEMENT, in discussing statutes of this type, states:

§114 The Settlor as Beneficiary

The Settlor of a trust may be one of the beneficiaries or the sole beneficiary of the trust.

• • •

Illustrations

1. Statutes. In some states there are statutes which provide that a transfer in trust for the benefit of the settlor is void. *Such statutes are interpreted as sole benefit of the settlor.*

(emphasis added)

The respondent merely assumes that because Mrs. Anderson does receive certain benefits under the trust,

the entire trust is therefore one for her sole benefit and that it falls within the meaning and intent of UCA 25-1-11 -- an obvious *non sequitur*. In Point II of the Respondent's Brief, certain uses and benefits of the trustor are listed and from this list Respondent concludes that Mrs. Anderson is the sole beneficiary of the trust. Respondent ignores the other provisions of her trust dealing with the distribution of her estate to her children and grandchildren upon her death [R87-98]. In addition, the testimony of Mrs. Anderson corroborated by Mr. Guyman, the trust officer, as to Mrs. Anderson's reasons for setting up the trust is ignored. They testified that Mrs. Anderson wanted the trust to protect and preserve her estate to equalize the distribution of her estate upon her death. She was also interested in protecting her estate from the constant demands of her son [R-158, 174-5]. From the above testimony and the trust agreement itself, it can be seen that the trust in fact was not for the sole benefit of the trustor, but provided benefits for Mrs. Anderson's children and grandchildren.

POINT II

RESPONDENT FAILS TO ADDRESS THE POINT THAT THE JUDGMENT MUST BE REVERSED BECAUSE IT AFFECTS ASSETS THAT COULD NOT POSSIBLY BE

WITHIN THE STATUTE RELIED UPON.

The statute relied upon, UCA 25-1-11, by its terms applies only to personal property, yet the judgment appealed from grants Plaintiff's judgment "in the amount of \$14,680.67 together with interest thereon," without any limitations as to the assets affected. The record clearly indicates that this trust is composed mainly of real property. Respondents ignore this dilemma and refer instead to the findings of fact and conclusions of law. We submit that their treatment of this issue is a confession that on this point, at least, the judgment is unduly broad and must be reversed.

POINT III

RESPONDENT EVIDENTIALLY CONCEDES THAT EVEN IF THIS TRUST WERE FOR THE BENEFIT OF THE TRUSTOR, A SUBSEQUENT CREDITOR COULD REACH ONLY THE INTEREST OF THE TRUSTOR.

The statute is designed to declare a creditor's rights and to do no more than that. In that respect it is also clear that the judgment appealed from goes far beyond even the authorities relied upon by Leach since the

judgment appealed from would permit Leach to reach *all* of the trust assets, *immediately*. In that regard, even assuming that the trust is for the sole benefit of Appellant, it clearly provides that she is to be maintained in the standard of living enjoyed by her at the time the trust was created. Thus Leach should be permitted to execute on no more than that portion of the trust assets which Norma Anderson herself could demand. To that extent, the judgment appealed from must be reversed.

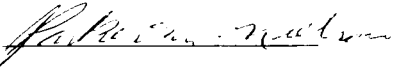
CONCLUSION

Respondent's arguments in the first full paragraph on page nine of his brief that the purpose of the trust was to guarantee Norma Anderson a generous salary from the family corporations is a misstatement, but more importantly it illustrates that this trust could not be considered within the policy of the statute. If Respondent is correct he should also be able to satisfy his judgment from the "generous salary" being paid to Norma Anderson. Obviously that is not so or this case would never have been initiated. The statute, even if it applies, gives Respondent rights only with respect to Norma Anderson's interest. So considered, this appeal represents an attempt to apply the statute for purposes never intended.

For all of these reasons, the judgment should be reversed.

DATED this 11th day of April, 1975.

Respectfully submitted,

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