

1995

Herschel J. West, Jr., Richard L. West, and Carole a. West Edmunds as beneficiaries under the Herschel J. West and Hazel L. West trust v. Marilyn West, an individual, as personal representative of the estate :
Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

IN THE MATTER OF THE ESTATE OF
HERSCHEL JOSEPH WEST,

Deceased.

HERSCHEL J. WEST, JR., RICHARD L.
WEST, AND CAROLE A. WEST
EDMUNDS as beneficiaries under the
Herschel J. West and Hazel L. West trust,
Petitioners and Appellants,

v.

MARILYN WEST, an individual, as
personal representative of the estate,
Respondent and Appellee.

UTAH SUPREME COURT
DOCUMENT BRIEF
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DOCKET NO. 950307CA

Case No. 950307-CA

Priority 15

BRIEF IN REPLY TO BRIEF OF APPELLEE

Appeal from the Final Judgment of the
Fourth Judicial District Court for Utah County
Honorable Guy R. Burningham, Presiding

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FILED

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COURT OF APPEALS

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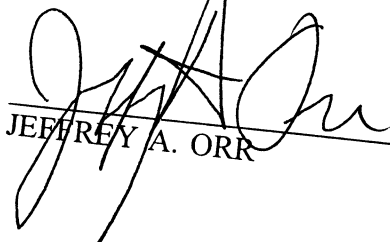
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The crux of Appellee's brief is that Herschel J. West and Hazel L. West intended that the power to revoke the trust should survive the death of either of them. This interpretation is contradicted by the Declaration of Trust in the preamble and clause one. The preamble states their joint declaration and acknowledgement that they would hold the property in trust until "the date of the death of the survivor of us." Similarly, in clause one, the successor trustee, if one is appointed by reason of the incapacity of Herschel and Hazel West, is directed to transfer the property "Upon the death of the survivor of us."

The Declaration of Trust obviously contemplated the death and incapacity of one or both of Herschel J. West and Hazel L. West. The surviving incapacitated spouse would be provided for through the actions of the Successor Trustee. The intent of both Herschel and Hazel West that the trust should survive until the death of the survivor of them can be effectuated without the absurd results claimed by Appellee to be concomitant to such intent. Appellee's Brief at 11-12. No unilateral power to revoke or terminate the trust was contemplated or intended.

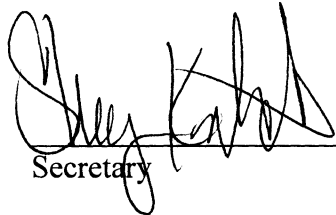
DATED this 8 day of December, 1995.


JEFFREY A. ORR

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 8 day of December, 1995, by first-class U.S. mail, postage prepaid, to the following:

Gregory B. Hadley
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Secretary