

2006

Kay W. Eager v. Ray Burrows, Ronald Burrows, Linda Davis, Arthur Kiisel, Julia Rodgers, Florence Webster : Brief of Appellee

Utah Court of Appeals

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Michael A. Jensen; Attorney for Appellant/Plaintiff.

Wesley D. Hutchins; Scalley, Reading, Bates, Hansen and Rasmussen; Attorneys for Defendants/Appellees.

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IN THE UTAH SUPREME COURT

KAY W. EAGAR,

Plaintiff/Appellant,

v.

RAY BURROWS, RONALD BURROWS,
LINDA DAVIS, ARTHUR KISEL, JULIA
RODGERS, and FLORENCE WEBSTER,

Defendants/Appellees.

BRIEF OF APPELLEES

Appellate Court No.: 20061011-SC

Third District Court No.: 060905534

BRIEF OF APPELLEES

Appeal from the Third District Court, Judge Denise P. Lindberg

Michael A. Jensen (#7231)
Attorney at Law
P.O. Box 571708
Salt Lake City, UT 84157-1708
(801) 519-9040; Fax: 519-9264
Attorney for Plaintiff/Appellant

Wesley D. Hutchins (#6576)
SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.
15 West South Temple, Suite 600
P.O. Box 11429
Salt Lake City, UT 84147-0429
(801) 531-7870; Fax: 531-7968
Attorneys for Defendants/Appellees

UTAH APPELLATE COURT

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15 West South Temple, Suite 600
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Salt Lake City, UT 84147-0429
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Attorneys for Defendants/Appellees

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(3)(j) (2002).

ISSUES PRESENTED FOR REVIEW AND STANDARDS OF REVIEW

ISSUE: Did the trial court correctly rule on summary judgment that Ray Burrows acted consistently with the broad gifting powers granted to him in a Durable Power of Attorney for Asset Management, and with any fiduciary duty he had thereunder, when he distributed personal property items to all eight children of Ralph and Ida Burrows by gifting to them said personal property in equal shares.

STANDARD OF REVIEW: Questions of whether the correct legal standards were applied are questions of law and are reviewed for correctness. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

STATEMENT OF THE CASE

NATURE OF THE CASE AND COURSE OF PROCEEDINGS: This case involves an agent's ability to gift personal property pursuant to a Durable Power of Attorney for Asset Management which expressly grants the agent such gifting powers and which powers are exercised consistently with the agent's fiduciary duty and the principal's integrated overall estate plan. The trial court denied Eagar's Motion for

Partial Summary Judgment which sought to have the personal property items returned to the estate, and granted Appellees' Cross Motion for Summary Judgment, dismissing Eagar's Complaint.

STATEMENT OF FACTS:

In addition to the facts set forth in Appellant's Brief, Appellees provide the following additional facts for the Court's consideration:

1. Following the death of Ralph Burrows on September 23, 2002, the children of Ralph and Ida Burrows were faced with making numerous decisions relative to Ida Burrows' care and asset management. (R. 109, 118, 143, 160).¹

¹Ray Burrows is in fact one of the sons of Ralph and Ida Burrows. As further clarification, he is the natural son of Ralph Burrows, and the step-son of Ida Burrows. Ralph and Ida Burrows were married for 43 years, prior to the death of Ralph. Ray was 28 years old at the time of Ralph and Ida's marriage on June 11, 1959, Ron was approximately 26, Linda 14, Art 23, Julia 17, Florence 24, Eagar 20, and Bill 24. (R. 170). For 43 years, Ray was in all respects considered a son of Ida, just as Eagar was considered a daughter of Ralph. (*Id.*) All eight children were considered sons and daughters of both Ralph and Ida, without regard as to who was a natural child, and who was a step-child. (R. 171). Regardless of any technical legal interpretation of the word "issue" as contained in Ida's will, based on personal experience, the facts and circumstances surrounding Ida's declining health and eventual passing, as well as statements made by Ida prior to her death, it is clear that Ida intended all eight children to have a share in any personal property items that belonged to her. Her intention is based on, but not necessarily limited to, the following factors: (a) She gave Ray unlimited power of attorney to make any and all decisions relative to her health care, and relative to asset management including her personal property items, and no such power of attorney was given to Ida's natural children; (b) There were times when Ida expressed profound frustration with regard to her natural children, Eagar and Bill, including stating

2. As part of an integrated estate plan, all of the following were executed on the same date (October 2, 1997): Ralph's will (Addendum 3 to Appellant's Brief; R. 18-30); Ida's will (Addendum 2 to Appellant's Brief; R. 32-44); Ralph and Ida's trust (Addendum 4 to Appellant's Brief; R. 46-64); Eagar's limited power of attorney for medical decisions (Addendum 1 hereto; R. 140); Ray's Durable Power of Attorney for Asset Management, which included a medical power of attorney as well (Addendum 5 to Appellant's Brief; R. 124-25).

3. Ralph and Ida's wills reference the preparation of a memorandum to direct the distribution of their personal property, which the undisputed facts demonstrate no

on a number of occasions that she wanted to disown Bill, that she had lost both Eagar and Bill, and that she was very hurt and had a broken heart relative to Eagar and Bill; and (c) During the 43 years of Ida's marriage to Ralph, she often and continuously stated that she considered Appellees all her children, without any distinction between natural children and step children. (*Id.*) Ida's feelings toward treating the children equally is corroborated by all eight children receiving an equal distribution under the Trust, and all eight children being listed in each of Ralph's and Ida's wills as living beneficiaries. (*Id.*; see also copies of the Trust and Wills attached as Addenda 2, 3, and 4 to Appellant's Brief). Specific evidence relating to Ida's frustration with Eagar and Bill was submitted to the trial court. (See R. 171-72, 182-85). Eagar undoubtedly disputes many of these facts, but they do not constitute material facts that prevented summary judgment in favor of Appellees. They merely serve to underscore that there was ambiguity as to what Ida intended the word "issue" to mean in the context of distribution of personal property as set forth in her will, i.e. whether a technical statutory definition of "issue" applied, restricting distribution of her personal property to two of the eight children (Eagar and Bill), or whether all eight children should each receive an equal share, consistent with the overall estate plan.

such memorandum was ever prepared by either. (Addendum 1 to Appellant's Brief; R. 27).

4. The Durable Power of Attorney for Asset Management (hereinafter simply "Power of Attorney") expressly grants Ray broad powers to perform the following, among other things:

to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, chooses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, including all business related to accounts in financial institutions. Also to gift property, whether real or personal, or sums of money or any other items belonging to IDA B. BUROWS [sic], and also for IDA B. BUROWS [sic] and in her name and as her act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases, and satisfactions of mortgage, judgment, and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

(Addendum 5 to Appellant's Brief; R. 124) (emphasis added).

5. The Power of Attorney granted to Ray also contained the following provision, relative to Ray's acts being legally considered the acts of Ida:

GIVING AND GRANTING unto RAYMOND R. BURROWS, said Attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as IDA B. BUROWS [sic] might or could do if personally present herself, thereby ratifying and confirming all that her said Attorney RAYMOND R. BURROWS, shall

lawfully do or cause to be done by virtue of these presents.

(*Id.*; R. 125).

6. In addition to having the broad power to make decisions relative to Ida's personal and other property, as the Power of Attorney granted to Ray was expressly entitled "for asset management," it also included the following language relating to medical care decisions:

Also to make decisions with respect to the medical care of Ida B. Burrows and all other matters concerning her health, including, but not limited to, choosing health care providers, making determinations with respect to the nature and location of such care, and the execution and delivery of all documents, contracts, and agreements in connection with such health care related decisions.

(*Id.*; R. 124).

7. Eagar was not given such broad control over Ida's assets, but was only given a limited "Power of Attorney" to make medical decisions, which merely stated she was authorized "to execute a health care directive on [Ida's] behalf under Section 75-2-1105, governing the care and treatment to be administered to or withheld from [her] at any time after [she] incur[s] an injury, disease, or illness which renders [her] unable to give current directions to attending physicians and other providers of medical services."

(Addendum 1 hereto; R. 140).

8. In addition to Ray's power to act as Ida's agent under the Power of

Attorney Ida granted to him, Ray was also to serve as the successor/substitute personal representative to Ralph's estate under Ralph's will (Addendum 3 to Appellant's Brief; R. 26), and as successor co-trustee under Ralph and Ida's trust. (Addendum 4 to Appellant's Brief; R. 48).

9. Following Ralph's death, significant assets, including a car, truck, house and lawn mower were all sold and the money deposited into the Burrows Trust for Ida's care and well being. (R. 109, 118, 145, 161).

10. In order to reasonably and properly consider the management of certain remaining assets, including the personal property at issue in this case, the majority of the children of Ralph and Ida Burrows considered and discussed the following factors:

- a. the pros and cons of spending money to place the personal property into storage;
- b. the pros and cons of leaving the personal property in the home untouched and open to possible theft, damage, or loss; and
- c. the pros and cons of paying utilities and upkeep for an unoccupied home, depleting assets of the estate, when it was clear that Ida's health would not permit her to remain in the home alone. (R. 109, 118-19, 145-46, 162).²

²These facts and some of those which follow are not materially disputed by Eagar. Consistent with *Bluffdale City v. Smith*, 2007 UT App 25 (Utah App. 2007), such facts

are therefore deemed admitted.

Furthermore, Eagar asserts that "[t]here is no evidence that Ida was terminally ill nor that she was fully incapacitated at the time Ray gifted away her personally property." Appellant's Brief at 8 n. 2. To the contrary, there was considerable evidence of same in this case. Prior to Ralph's surgery which resulted in learning that he suffered from a terminal condition, Ida had been living with Ralph in their marital home, and Ida was under Ralph's care. Nevertheless, just because Ida was at home did not mean that she was fine and could take care of herself. Ralph was her caretaker. Ida was often very confused, and difficult to care for. Eagar was not familiar with her mother's state of health, and need for assistance with her care, because Eagar rarely if ever went to the home and visited her mother. (R. 173). During the time of Ralph's hospitalization, Ida's medications and bladder infections were recurring problems. (*Id.*). At the time of Ida's admission into Alta View Hospital, nobody knew how long her hospital stay would be, or what circumstances her hospitalization would involve. (R. 174).

Contrary to Eagar's assertion that Ray did not allow Ida to return home, the fact is that Ida was completely unable to go back to the house, was unable to collect any personal property items, and was unable to make any decisions on her own. Ida's inability to return to the house was supported by medical opinion. The hospital recommended that Ida be transferred to Health South for more long term care, and from there decide what future health care she might need. Ida was transferred to Beehive House at Eagar's request, where she remained for three (3) weeks. Ida was then hospitalized twice, and Beehive House told the children that they could not take Ida back -- she was not able to sustain herself, or take care of her own basic needs, and that she also disturbed the other patients. At that time, Ida could not be returned to the house because she needed around-the-clock care. (R. 174). She was 89 years old at the time, and had been diagnosed with dementia (as per Dr. Bennett). (R. 177).

Moreover, Eagar points out that Ida lived for nearly three years after the gifting took place. Appellant's Brief at 8 n. 2. Eagar fails to point out, however, that Ida was never released from a care center, and lived there three years until her death. (See R. 292 at page 10). Such circumstances factually corroborate Ida's incapacity.

Regardless of the foregoing, Ida's terminal illness and/or incapacity were never raised as disputed facts preventing summary judgment against Eagar at the trial court level, as the Power of Attorney was self-executing. It did not require Ida's incapacity to become effective, though it preserved the agent's power in the event she eventually became incapacitated, therefore illness and capacity issues were not material to

11. Ray conducted, pursuant to the Power of Attorney granted to him by Ida, a drawing for the personal property on or about October 5, 2002. (R. 109-10, 119, 146-47, 163).

12. Each of the eight children drew numbers, and were then allowed in turn, to select personal property items they each desired. (R. 109, 119).

13. Eagar participated in the drawing and received numerous items of personal property, including a set of Wilford Woodruff journals believed to have a value in excess of \$6,000. (R. 110, 119, 147, 163).

14. The personal property items that were gifted to the eight children through the random drawing included: needlepoint pictures, rocker, chest of drawers, firearms, book case, 3-legged table, Christmas tree, books, mirrors, clock, snow blower, leaf blower, lamps, watches, pillows, dishes, music box, and many other items. (See document listing the items drawn by the children, attached hereto as Addendum 2; R. 127-28).

15. Two children not present at the distribution of personal property were represented by other children who were present, and selected items on their behalf. (R.

consideration of Appellee's Cross Motion for Summary Judgment.

110, 119, 147).

16. The personal property items were given to each child with the understanding that wherever Ida eventually resided, that if she wanted items returned to her, they would be returned for her use until her passing. Upon her death, the personal property items would remain with the children who had chosen them. (R. 110, 119, 147, 164).

17. Following the death of Ida,³ at the time of her viewing, Eagar showed two of the children, Florence Webster and Linda Davis, jewelry that belonged to Ida, and which had been in Eagar's possession from the time of Ida's initial hospitalization when Ralph was in the hospital. (R. 110, 119, 147).

18. Eagar asked Florence to take the jewelry and decide how to share it with the other children. (R. 110, 120, 148).

19. After looking through the jewelry, it was decided that one of the wedding ring sets was probably the one that Eagar's father had given Ida, and it was agreed that she should have that set. (R. 110, 120, 148).

³Ralph and Ida were married in 1959, which meant at the time of Ralph's death on September 23, 2002, they had been married for more than 43 years. (R. 14). Appellees, through counsel, miscalculated the number of years in briefing the issue to the trial court, and incorrectly indicated the marriage lasted for more than 45 years. References to the length of Ralph and Ida's marriage in this brief shall be to the correct length of their marriage, i.e. more than 43 years.

20. The rest of the jewelry was distributed to the other children by drawing after the funeral, at which Eagar was present and drew an item for her brother Bill Whiteley. (R. 110-11, 120, 148).

SUMMARY OF ARGUMENTS

Ray Burrows gifted the subject personal property items to all eight of Ralph and Ida's children in a manner consistent with the broad gifting powers granted to him under a Power of Attorney, consistent with his roles as co-trustee under the family trust and as personal representative under Ralph's will, and consistent with Ralph and Ida's intent as reflected in all such documents executed on the same date as an integrated estate planning package. Ray did not breach any fiduciary duty, but conducted himself in a fair and equitable manner considering all of the circumstances.

The word "issue" as used in Ida's will under the circumstances of this case is not clear and unambiguous in light of the absence of a written memorandum directing the distribution of personal property, which her will clearly contemplated. If accepted, Eagar's position logically would require that if Ida had predeceased Ralph, all of the personal property from the 43-year marriage of Ralph and Ida, would have gone solely to Ralph's "issue" (Ray and Ralph Burrows) to the exclusion of the remaining children -- a result that would be equally unfair and inconsistent under the overall estate plan. All of the cases cited by Eagar in support of her position are factually distinguishable in that

they do not involve cases interpreting powers of attorney with gifting provisions relative to the distribution of personal property. Case law from Utah and other jurisdictions, as well as other legal authorities including the Restatement, support an affirmation of the trial court's decision in this case.

Public policy considerations also strongly favor affirming the trial court's decision. Adopting Eagar's position would effectively eliminate anyone's ability to rely on the validity of a gifting provision set forth in a power of attorney, which would have broad sweeping obvious negative effects.

ARGUMENT

I. THE COURT SHOULD AFFIRM THE TRIAL COURT'S DECISION THAT RAY BURROWS CONDUCTED HIMSELF IN A MANNER CONSISTENT WITH THE BROAD POWERS GRANTED TO HIM IN A DURABLE POWER OF ATTORNEY WHEN HE GIFTED THE PERSONAL PROPERTY OF IDA BURROWS TO HER EIGHT CHILDREN BY RANDOM DRAWING IN EQUAL SHARES.

Boiled down, Eagar asserts that the tangible personal property of the estate of Ida Burrows should be returned to her as personal representative of the estate. The personal property at issue in this case, however, was gifted by random drawing, to all of Ida's eight children,⁴ shortly after the death of Ida's husband of 43 years, Ralph Burrows. Each

⁴Eagar has previously argued that Ray Burrows is not the son of Ida, and that other siblings are not her children. (R. 142 n.1). The relationship of the children to their

child, in turn, was given the opportunity to select items of personal property that they wanted.

It is curious indeed, that Eagar's Motion for Partial Summary Judgment filed with the trial court was completely silent as to Ray Burrow's Power of Attorney. Its existence was mentioned nowhere. The reason is obvious. Its existence decisively obliterates Eagar's claims. Eagar's Complaint contains two causes of action: (1) for return of personal property under Utah Code Annotated Section 75-3-708 (duty of personal representative to take possession of tangible personal property in the estate); and (2) for conversion. Personal property disposed of pursuant to Ray Burrow's Power of Attorney, prior to the death of Ida Burrows, is no longer part of the estate over which the personal representative has any right of possession after her appointment. In this case, Ray Burrows disposed of the personal property on 10/5/02. Ida Burrows died on 9/19/05, nearly three years later. Nearly three months later, Eagar was appointed the personal representative of Ida's estate. Consequently, Eagar has no legal right as personal representative to take possession of personal property that was properly distributed pursuant to a Power of Attorney more than three years prior to Eagar's appointment and the death of Ida.

parents is discussed above more fully in footnote 1.

The Power of Attorney which Ray Burrows possessed expressly authorized him to do all of the following:

to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, chooses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, including all business related to accounts in financial institutions. Also to gift property, whether real or personal, or sums of money or any other items belonging to IDA B. BUROWS [sic], and also for IDA B. BUROWS [sic] and in her name and as her act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases, and satisfactions of mortgage, judgment, and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

(Addendum 5 to Appellant's Brief; R. 124) (emphasis added). Moreover, the Power of Attorney went on to include the language that any acts taken by Ray should be considered as though they were acts personally taken by Ida. Specifically, it stated in relevant part:

GIVING AND GRANTING unto RAYMOND R. BURROWS, said Attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as IDA B. BUROWS [sic] might or could do if personally present herself, thereby ratifying and confirming all that her said Attorney RAYMOND R. BURROWS, shall lawfully do or cause to be done by virtue of these presents.

(Id.; R. 125) (emphasis added).

It is obvious that Ida trusted Ray to make decisions regarding the management of her assets, including her personal property. That is why she gave him the Power of Attorney. The level of trust she gave Ray Burrows is emphasized by the fact that she granted to Eagar only a limited Power of Attorney to make decisions regarding her healthcare, and not a broad power of attorney to manage assets specifically endowed with broad gifting powers. (See copy of medical Power of Attorney, attached as Addendum 1 hereto). Ray had the power to gift the personal property to anyone. He elected to gift the property in a fair and reasonable manner -- by drawing with the involvement of all of the children. Eagar's participation in a similar manner of distribution of jewelry following her mother's death bolsters the fundamental fairness of the 10/5/02 distribution. (See R. 110-11, 120, 148).

II. THE COURT SHOULD UPHOLD THE TRIAL COURT'S RULING THAT RAY BURROWS DID NOT VIOLATE ANY DUTY OF LOYALTY TO IDA.

Contrary to Eagar's allegation, Ray's agency through the Power of Attorney granted to him by Ida is not elevated over Ida's Will. In fact, the exercise of his agency was entirely consistent with her Will, with her clear intent as to the distribution of her personal property, and with Ralph and Ida's overall estate plan. Leaving aside any technical statutory definition of the word "issue," Ida treated all the children as her own, and desired to have all property divided among them equally. Ida's Will in and of itself

is not clear and unambiguous. Surely, it is unlikely that Ida knew in her mind that the word "issue" might be a statutorily defined term of art that would exclude numerous individuals whom she considered, loved, and treated in all respects as her own children for more than 43 years. Obviously she intended "issue" to refer to all of her children, and that they should all be treated equally as is consistent with the other estate planning documents and is consistent with her clearly expressed intent.

The parties hereto have found no Utah appellate case law interpreting the word "issue" in a will. One appellate decision outside Utah, however, has held that the word "issue" does not "have such a fixed and limited meaning that it cannot vary with the intention of the testator who uses it." Accordingly, the intent of the testator becomes a valid consideration. *Newick v. Mason*, 581 A.2d 1269, 1273 (Maine 1990); *see also Hamilton v. Hamilton*, 869 P.2d 971, 975 (Utah App. 1994) (when construing a will, "extrinsic evidence may be used to ascertain what the testator intended").

Eagar's argument, if accepted, means that simply because Ralph predeceased Ida, all of the personal property items that belonged to Ralph then became Ida's, and then upon Ida's death would be distributed to Ida's two natural children alone, to the exclusion of the remaining six children. The evidence in this case, taken as a whole, as set forth in the statements of fact above, demonstrates that was not Ralph or Ida's intent. Ralph and Ida intended to treat all of the eight children equally. If Ida had predeceased

Ralph, upon Ralph's death, his children would not have distributed personal property items to the exclusion of Ida's natural children.

Appellees acknowledge that Ida's property was to be used for her benefit.

Arguably, Ray was at least empowered to coordinate the distribution of 50% of the personal property acquired during the marriage which pertained to his father's estate.

Appellees recognize the difficulty in determining how such items could be divided in such a manner. It is exactly for such reasons -- difficulty managing assets and difficulties arising from one's incapacity -- that powers of attorney are granted. Having been granted powers as a co-trustee in the Trust, as the personal representative of his father's estate, and as the attorney-in-fact under the Power of Attorney, Ray distributed the personal property in as fair and equitable manner as could be determined, given the intentions of both Ralph and Ida. Many of the items of personal property had little or no commercial value, but those that did, such as the house, vehicles, lawn mower, etc. were sold and the monies placed into the Trust. Many items of personal property had significant sentimental value, but insignificant commercial value. It was felt that those items should remain with members of the family, and to the extent they were eventually determined to have any significant commercial value, those amounts could be paid into the Trust by the recipients of those items.

Items belonging to Ida were absolutely for her benefit, and all such decisions made

with respect to her property were made with that fact in mind. Indeed, following the drawing that led to the distribution of the personal property, and after Ida moved into Sandy Regional, many of the items were returned to her and placed in her room for her benefit, until the time of her death. (R. 174-75).

Ray was not acting in a self-serving manner under the Power of Attorney. He, along with the other children, were trying to use best efforts to conduct themselves fairly, honestly, and in a manner consistent with the desires of their parents. If Ray were acting entirely in his own self interest, instead of conducting a random drawing that permitted each of the children to select items they desired to possess, he would have taken possession of all the personal property, and either kept it all for himself, or sold what he could and kept the money. In addition, Ray was acting in a manner consistent with a strict construction of the Power of Attorney. As set forth above, it expressly grants Ray the broad powers, without stated limitations, including the express power to gift Ida's personal property and that all acts of Ray should be considered to be her own acts. (See Addendum 5 to Appellant's Brief; *see also Kline By and Through Kline v. Utah Dept. of Health*, 776 P.2d 57, 61 (Utah App. 1989) ("A power of attorney is an instrument in writing by which one person, as principal, authorizes another to act as agent. The scope of the authority so conferred may, by the terms of the instrument itself, be general or limited, but the instrument creating this agency relationship is to be strictly

construed.").

As indicated above, the parties to this action have found no case law in Utah that is directly on point in this matter. Eagar cites case law from three other jurisdictions in support of her position: Alabama, Massachusetts, and Ohio. All of these cases relied on by Eagar are readily distinguishable on their facts.

From Alabama, Eagar relies on *Lamb v. Scott*, 643 So. 2d 972 (Ala. 1994), and *Sevigny v. New South Fed. Sav. & Loan Ass'n*, 586 So. 2d 884 (Ala. 1991). See page 11 of Appellant's Brief. In *Lamb*, the court was not dealing with an integrated estate planning package, but rather interpretation of a will done a year later after a power of attorney had been completed, which did not contain any gifting provision, and which dealt with the validity of an attorney-in-fact's conveyance of real property (the family farm) solely to herself, as opposed to her sharing an equal 1/3 share in the property with the deceased's other daughter and stepson. The court properly invalidated the agent's attempted conveyance in that case. See *Lamb*, 643 So. 2d at 973-74. Similarly *Sevigny* did not deal with a power of attorney which contained a gifting provision, but rather dealt with the agent's claimed share in various certificates of deposit totaling \$315,165. It therefore, also did not deal with personal property of questionable commercial value, but rather with substantial cash assets.

Out of Massachusetts, Eagar cites to *Gagnon v. Coombs*, 654 N.E.2d 54 (Mass.

App. 1995), and then string cites to eight cases referred to in *Gagnon*. See page 12 of Appellant's Brief. Like *Lamb*, discussed above, *Gagnon* dealt with a power of attorney that had no gifting provision, and which considered the appropriateness of the agent conveying to herself an interest in real property. As trustee of a trust she created, she conveyed to herself the principal's 184-acre farm property. The court properly invalidated the attempted conveyance of the real property in that case. *Id.* at 56, 63.

Each and every one of the eight cases cited in Eagar's string reference is distinguishable for the reason that none involved a power of attorney and were also otherwise factually dissimilar on other grounds as well. See *Jennison v. Hapgood*, 7 Pick. 1 (Mass. 1828) (dealing with conveyance of real property -- a valuable "homestead farm"); *Sikes v. Inhabitants of Hatfield*, 13 Gray 347 (Mass. 1859) (dealing with claim for compensation beyond "tax bills"); *American Circular Loom Co. v. Wilson*, 84 N.E. 133 (Mass. 1908) (patent case involving issues of confidentiality in employer/employee context); *Dolbeare v. Bowser*, 149 N.E. 626 (Mass. 1925) (dealing with fiduciary duty of guardian to his ward); *Pitman v. Pitman*, 50 N.E. 2d 69 (Mass. 1943) (dealing with testamentary power of appointment); *Berenson v. Nirenstein*, 93 N. E. 2d 610 (Mass. 1950) (dealing with fiduciary duty between purchaser and broker); *Mackey v. Rootes Motors Inc.*, 204 N.E. 2d 436 (Mass. 1965) (dealing with general agency principles in employer/employee relationship); *O'Brien v. Dwight*, 294 N.E. 2d 363 (Mass. 1972) (dealing with duties as a

fiduciary of a trust).

From Ohio, Eagar then refers to the following three decisions: *In re Estate of Leach*, 2006 Ohio 3755 (Ohio App. 2006); *In re Estate of Case*, 1998 Ohio App. LEXIS 1378 (Ohio App. 1998); and *Testa v. Roberts*, 542 N.E. 2d 654 (Ohio App. 1988). Each of these cases is also distinguishable for the fact that none dealt with a power of attorney with a gifting provision, and also each dealt with substantial sums of cash assets. See *Leach*, at page 1 (involved \$66,439.42 in cash assets); *Case*, at page 1 (involved \$66,230.07 in cash assets); *Testa*, 542 N.E. 2d at 657 (involved total of \$235,980.19 in cash assets; also determined sufficient evidence that principal was not competent to sign the power of attorney, which Eagar has admitted there is no evidence Ida was incompetent when she signed the Power of Attorney in this case (see Appellant's Brief at 13)). Obviously, in the case before this Court, Ray has a very clear Power of Attorney that expressly granted him gifting abilities. Moreover, the property conveyed under the Power of Attorney was not cash assets, but personal property items of little or unknown monetary value including such things as needlepoints, furniture, book cases, and the like.

It is also important to discuss the Restatement provisions cited by Eagar in the context of the alleged "self dealing." Appellees do not disagree with the general principle that "[a]n agent is a fiduciary with respect to matters within the scope of his agency." Restatement (Second) of Agency § 13. The Restatement goes on to describe, however,

the circumstances considered in interpreting the scope of an agent's authority:

An authorization is interpreted in light of all accompanying circumstances, including among other matters:

- (a) *the situation of the parties, their relations to one another, and the business in which they are engaged;*
- (b) the general usages of business, the usages of trades or employments of the kind to which the authorization relates, and the business methods of the principal;
- (c) *facts of which the agent has notice respecting the objects which the principal desires to accomplish;*
- (d) the nature of the subject matter, *the circumstances under which the act is to be performed* and the legality of the act; and
- (e) *the formality or informality, and the care, or lack of it, with which an instrument evidencing the authority is drawn.*

Restatement (Second) of Agency § 34 (emphasis added). This provision makes it clear that all circumstances should be considered when interpreting an agent's authority. In this case, Ray is the eldest of eight children, operating as one with several roles: son, agent, attorney-in-fact, personal representative, and co-trustee. He is the son of an individual involved with a 43-year marriage, and faced with making decisions regarding the managements of assets, including personal property, relating to that long-term marriage relationship. He is not in a business or employer/employee situation, which the Restatement provisions cited by Eagar clearly contemplate. He is an agent in a family relationship involved with asset management pursuant to an overall estate plan. The Restatement provisions cited by Eagar are distinguishable on these bases. In fact, the comments to § 34 expressly state that "[t]he enumeration in this Section of

circumstances which are considered in determining the extent of authority is not intended to be exhaustive . . ." and goes on to further state as follows regarding "formal instruments":

Formal instruments which delineate the extent of authority, such as powers of attorney and contracts for the employment of important agents, either executed on printed forms or otherwise giving evidence of having been carefully drawn by skilled persons, can be assumed to spell out the intent of the principal accurately with a high degree of particularity. . . In fact, of course, [formal instruments] are construed so as to carry out the intent of the principal. There should be neither a 'strict' nor a 'liberal' interpretation, but a fair construction which carries out the intent as expressed.

Restatement (Second) of Agency § 34, Comments *a* and *h*. The Power of Attorney granted to Ray is exactly the type of formal instrument contemplated by the Restatement which should be given a fair construction under all the circumstances. It could therefore not be considered, in any significant way, to be self-dealing for him to gift personal property to all eight children in equal shares, with each child taking turns selecting the items they each wanted to receive.

Moreover, Eagar is curiously silent as to other Restatement provisions which clearly support Ray's power to gift personal property items in the manner he did in this case. For example, Restatement (Third) Property (Wills and Other Donative Transfers) § 6.1 sets forth the requirements applicable to all gifts of property, and which expressly allows for gifts by an agent under a durable power of attorney. *Id.* at Comment *l*. See also

Restatement (Third) Property (Wills and Other Donative Transfers) § 6.2 (dealing with gifts of personal property and discussing in Comment j gifts by a donor's agent); and Restatement (Third) Property (Wills and Other Donative Transfers) § 8.1 (dealing with donative transfers by agent under durable power of attorney in Comment l).

Based on all of the foregoing, the trial court correctly ruled that Ray did not violate a duty of loyalty to Ida. Even more so, he conducted himself in a manner that honored her intentions as reflected in her overall estate plan.

III. THE TRIAL COURT'S DECISION SHOULD ALSO BE AFFIRMED BECAUSE IT INTERPRETED IDA BURROWS' INTENT FROM AN ENTIRE INTEGRATED ESTATE PLANNING PACKAGE, AND NOT SOLELY BASED UPON A TECHNICAL OVERLY NARROW DEFINITION OF THE WORD "ISSUE" CONTAINED IN HER WILL.

Eagar cites to the 1920 Utah Supreme Court decision of *Huntsman v. Huntsman*, 192 P. 368 (Utah 1920) (considering cancellation of mortgage on real estate and quieting title), to support the proposition that "whether attorney-in-fact has power to convey principal's property for nominal consideration must be deducible from the language or manifest intent of the [power of attorney] instrument." Appellant's Brief at 8 (citing *Huntsman*, 192 P. at 370). Eagar's citation to this decision for this proposition is misleading. Eagar fails to point out that the Court's expressed rule of construction was based on the fact the power to convey property by gift was not contained in the power of

attorney under scrutiny in *Huntsman*. More specifically, the Court stated as follows, referring to the power of attorney at issue in that case: "The language, 'do make, constitute, and appoint Peter Huntsman, of Fillmore City, Millard county, Utah territory, my true and lawful attorney, for myself and in my name, place, and stead, and for my use and benefit,' is very far from conferring power to give the property away, or convey it for a mere nominal consideration." *Id.* at 370. We have in the present case the exact scenario which prevented the Court from reaching a different result in that case, i.e. express broad and unqualified gifting authority specifically given to Ray in the Power of Attorney. On the facts of the present case, *Huntsman* becomes a power precedent supporting the trial court's decision.

As Eagar has pointed out, there appears to be no case law in Utah interpreting a gifting provision in a power of attorney that is ostensibly at odds with a will provision. One very recent appellate decision that provides persuasive authority to affirm the trial court's decision in this case is *Blin v. Johnson*, 2007 U.S. Dist. LEXIS 26977 (W.D. Ky. April 11, 2007). In *Blin*, the court was faced with interpreting a power of attorney that granted the attorneys-in-fact (sisters) in that case power to manage the decedent's estate, and specifically whether under that power of attorney they were entitled to distribute monetary gifts from the estate. *Id.* at page 1. The court pointed out that the power of attorney was silent as to whether the attorneys-in-fact could distribute gifts from the

decedent's estate. *Id.* at page 2. The court observed that a power of attorney could be interpreted to authorize such gifts, however, an "utmost good faith" standard was to be applied and determined by a factfinder. *Id.* (citing *Wabner v. Black*, 7 S.W. 3d 3379 (Ky. 1999)). However, after the *Wabner* decision, the Kentucky legislature enacted a statute providing that "[n]otwithstanding any provision of law to the contrary, a durable power of attorney may authorize an attorney in fact to make a gift of the principal's real or personal property to the attorney in fact or to others if the intent of the principal to do so is unambiguously stated on the face of the instrument." *Id.* (citing KRS 386.093(6)). The issue the court faced was how to deal with the absence of clear and unambiguous language in a power of attorney before enactment of the statute. *Id.* at 3. The court observed, correctly, that prior to the statute, "an attorney-in-fact *would have been authorized* to distribute gifts if that were the unambiguous intent of the Power or Attorney and clear on the face of the document." *Id.* (emphasis in original). In other words, the Kentucky statute was now making it clear that "unambiguous written permission to gift is required in the Power of Attorney," or no such gifting powers would be implied under an "utmost good faith" standard.

Applying the logic of *Blin* to this case, there is clear and unambiguous gifting ability granted under Ray's Power of Attorney, so gifts thereunder should be upheld. Like in Kentucky, as Eagar points out, Utah passed a law effective May 5, 2003, which

required that authority to gift property must be expressly granted in a power of attorney. Utah Code Ann. § 75-5-503. Contrary to Eagar's argument, if Ray had gifted the subject personal property after the effective date of the statute, it would not be voidable. See Appellant's Brief at 18. The Power of Attorney expressly authorized gifting to take place, and the Utah statute was now making a requirement what had already been done in this case -- a written authorization expressly granting the power to make gifts.

Furthermore, the gifting of the subject personal property in this case is not voidable due to a "substantial conflict of interest" under Utah Code Ann. § 75-5-504. Ray is only one of eight children, each of whom were treated equally and fairly in the distribution of the subject personal property, each receiving an equal opportunity to obtain an equal portion of the personal property -- a process in which all eight children participated. Under such circumstances, there was clearly no "substantial conflict of interest." If Ray had attempted to gift all the property to himself, or a limited number of the children, Eagar may have a legally sound basis upon which to raise a conflict of interest argument. Under the facts of this case, she has no such basis.

Eagar's reliance on an overly restricted interpretation of conservatorship law also provides no convincing support for her position. See Appellant's Brief at 18-19. Under Utah Code Ann. § 75-5-427, "the conservator and the court *should take into account any known estate plan of the person, including his will, any revocable trust of which he*

is a settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated." (Emphasis added). Such language makes it clear that interpretation of the authority granted under a power of attorney should not be restricted to an overly narrow reading of a will, and a technical statutory definition of the word "issue" as may be used therein, but should look at the entire estate plan, including the family trust (making it clear that all eight children were to be equal beneficiaries), the Power of Attorney, all of which were executed on the same date as an integrated estate plan. As the trial court noted, the broad grant of authority to Ray under the Power of Attorney was consistent with the entire estate plan executed on the same date as an integrated package of estate planning, and that while Ray was not technically an "issue" of Ida, it is clear that she placed substantial trust in him, as evidenced by the Power of Attorney and the overall estate plan. (Addendum 1 to Appellant's Brief at page 3).⁵

⁵Eagar asserts that "the trial court never discussed nor ruled on whether the use of the term 'issue' in Ida's will was intended to be broader than the statutory definition found in §§ 75-1-201(5), (9), and (25), Utah Code Ann." Appellant's Brief at 14. The trial court may not have expressly addressed the issue, but it certainly did by implication when it determined that it was appropriate to look at the entire estate plan to determine Ida's intent -- the court was not limited to a narrow statutory definition of the word "issue" contained in Ida's will.

With regard to construction of testamentary intent, Eagar has improperly quoted the Utah Court of Appeals out of context in *Hamilton v. Hamilton*, 869 P.2d 971 (Utah App. 1994). See Appellant's Brief at 15. The *Hamilton* court held as follows:

In construing a will, we are bound by the fundamental principle that a `court must look to the testator's intent as expressed in the will.' Moreover, if the will is ambiguous, any rule of construction normally used in other writings must yield to the intention of the testator as revealed in the instrument.

Hamilton, 869 P.2d at 975 (citations omitted). Importantly, the court went on to observe as follows, which Eagar has conveniently omitted from the quoted language:

A testator's intent may be `ascertained not alone from the provision itself, but from a scrutiny of the entire instrument of which it is a part, and in the light of the conditions and circumstances in which the instrument came into existence.' Thus, extrinsic evidence may be used to ascertain what the testator intended.

Hamilton, 869 P.2d at 975 (citations omitted). Under *Hamilton*, the trial court's consideration of the entire estate plan and the totality of the circumstances, was an appropriate consideration in determining that Ray's conduct was consistent with Ralph and Ida's intent as reflected by their overall estate plan.

As the trial court pointed out, both wills provided that there were to be memoranda by Ralph and Ida identifying to whom personal property items were to be given. Unfortunately, no such memoranda were prepared, which would have eliminated much of the difficulty in this case. (R. 292 at 30). Under such circumstances, including

the absence of written memoranda directing the distribution of Ralph and Ida's personal property, Ray had the authority to act as he did.

The logical corollary to Eagar's argument suggests that if Ida had predeceased Ralph, and she left no memoranda directing the division of personal property, all of Ida's personal property would have become Ralph's, and then if Ralph left no memorandum, then all personal property would have gone to Ralph's two issue (Ray and Ron Burrows), to be divided among them as the personal representative (Ray) saw fit in his sole and absolute discretion. Under such a scenario, Eagar could have potentially received none of the personal property. Eagar under such circumstances would obviously therefore be arguing for a different interpretation of the estate plan, and would be arguing for the word "issue" to be interpreted broadly, or at least for the other children to receive personal property in a manner consistent with the overall estate plan.

The division of personal property accumulated during a 43-year marriage to be divided in such a dramatically different way based on something as fortuitous as who died first makes absolutely no sense in light of Ralph and Ida's overall estate plan. Certainly, it would have been ideal if both Ida and Ralph had left memoranda describing the distribution of personal property items. The fact is they didn't. Obviously, a pour-over provision as to personal property is in reality intended to deal with any remaining minor personal property items not included in a memorandum, and/or which may have been

acquired by the deceased after the memorandum was created. In the absence of such memoranda, it is appropriate to look at their intent as reflected in the overall estate plan, and what makes sense under the totality of the circumstances. Gifting the personal property items to all eight children by drawing, in equal shares, is consistent with all eight children being equal beneficiaries under the trust and is consistent with the broad powers granted to Ray under the Power of Attorney. All of Ralph and Ida's personal property going to Eagar and Bill is not consistent with their intent as set forth by their overall integrated estate plan.

IV. PUBLIC POLICY ACTUALLY FAVORS UPHOLDING THE TRIAL COURT'S DECISION IN THIS CASE, THEREBY SAFEGUARDING THE ABILITY TO RELY ON THE EXPRESS TERMS OF A POWER OF ATTORNEY AND PRESERVING THE LONGSTANDING PRINCIPLE THAT SUCH AGENCY SHOULD BE STRICTLY CONSTRUED.

Regarding public policy issues, Eagar argues as follows:

Applying the policies for fiduciaries found under Utah law, three patterns emerge: (1) A fiduciary must act for the benefit of the principal; (2) he should not act in a self-serving manner nor make gifts to himself; and (3) he should act consistent with the principal's will or general estate plan. In the instant case, Ray failed to comply with all three of these policies when he failed to act for Ida's benefit by gifting away all of her personal property, when he made gifts to himself, and when his gifting was inconsistent with Ida's Last Will and Testament.

Appellant's Brief at 19. As set forth above, it is clear on the facts of this case that Ray actually acted in compliance with each of these policies, even assuming for sake of

argument they are accurate descriptions of policies relative to fiduciaries. Ray acted for the benefit of Ida by honoring the intent behind her overall estate plan, that all eight children should be treated equally, and by ensuring that if Ida needed any personal property items during the remainder of her natural life following her move into a long-term care facility, such items of property would be made available to her. As the trial court noted, "the personal property distributed by [Ray] constituted gifts that vested at the time of the distribution, and the informal undocumented agreement that items gifted to others might still be made available for Ida Burrow's use during her lifetime was an accommodation to a mother they all cared for." (Addendum 1 to Appellant's Brief; R. 275-76).

Ray did not act in a self-serving manner. He gifted the personal property in a fair and equal manner. Once again, as the trial court observed in its order:

3. Burrows did not mismanage the assets of Ida Burrows;
4. Under the Durable Power of Attorney for Asset Management, written in broad terms, Burrows had the authority to dispose of Ida Burrow's personal property essentially in any manner he deemed appropriate within the limitations imposed by any fiduciary duties that might be applicable;
5. The manner in which Burrows disposed of the personal property was not inherently inequitable, or self-serving, but rather sought to deal with all the children equally, as Ralph and Ida Burrows clearly intended pursuant to and consistent with their overall estate plan;
6. The Court notes that Ralph and Ida Burrows' wills referenced the preparation of a memorandum to direct the distribution of their personal property, which the undisputed facts demonstrate no such

memorandum was ever prepared by either;

7. In the absence of such a memorandum, the Court is satisfied that Burrows had the authority under the Durable Power of Attorney for Asset Management to distribute the personal property in the manner he did;

(Addendum 1 to Appellant's Brief; R. 274-75).

In addition, the facts of this case demonstrate, as discussed more fully above, that Ray conducted himself in a manner consistent with Ida's general estate plan. On such issues, the Court expressly observed:

8. As further support of the Court's decision, the Court notes that the broad grant of authority under the Durable Power of Attorney for Asset Management was not inconsistent with the entire estate plan executed on the same date as an integrated package of estate planning;

9. While Burrows was not technically an issue of Ida Burrows, it is clear that she placed substantial trust in him, as evidenced by the Durable Power of Attorney for Asset Management and the overall estate plan;

(Addendum 1 to Appellant's Brief; R. 275).

Contrary to Eagar's position, public policy actually strongly favors upholding the trial court's decision. To reverse the trial court would significantly erode, and arguably even eliminate, any ability to rely on the validity of powers of attorney. In other words, if a power of attorney allows an agent to make gifts of personal property, that is exactly what it means and what it should allow to take place. The power of attorney shouldn't

have to say it more than once,⁶ or in some other perceived “non-minor” way as Eagar suggests, before it becomes valid and enforceable. Eagar is essentially asking the Court to write out of the Power of Attorney the gifting of personal property language. If Eagar’s position is adopted by this Court, parties would no longer be able to have confidence in a validly executed power of attorney, and would have a disincentive to take any action based upon it for fear of acting in a way that is not actually authorized by the instrument. Such a result would have broad sweeping negative effects. Such a result would become disruptive to commercial relationships generally, estate planning matters specifically, and really any setting in which a power of attorney is utilized.

Finally, Eagar essentially wants to argue that because Ida was still living at the time of the distribution of the personal property into equal shares by random drawing, that it was somehow wrongful, sinister, and/or not in Ida’s best interest for Ray to act

⁶Eagar has suggested that a single reference to gifting in such a “minor” way should not give the agent the authority to exercise broad gifting powers. (Appellant’s Brief at 8-9). When does Eagar think use of gifting language crosses the line from “minor” to “major” (or otherwise significant) as she has suggested to this Court? Does it have to be contained in the document more than once? How many times does the document have to say it? Does it have to be bolded, underlined? To adopt Eagar’s position could not only have dramatic adverse effects on the interpretation of and reliance upon powers of attorney, but upon contract interpretation generally. Written documents would no longer mean what they say, and furthermore, and perhaps equally problematic, would be entering into some kind of line-drawing interpretation of written instruments that involves determining whether a provision is only “minor” or is really intended to be something more than that.

under the Power of Attorney. If deemed a valid basis to challenge the Power of Attorney under the circumstances of this case, every single power of attorney ever executed would be of questionable validity. A power of attorney is by its very nature intended to give decisionmaking authority to another (the agent) while a person (the principal) is still alive. Eagar's argument on this point therefore makes no sense, and would effectively turn agency law completely on its head. In short, the public policy considerations in this case accordingly support affirming the trial court's decision.

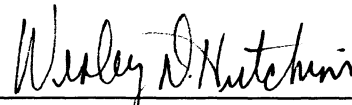
CONCLUSION AND RELIEF SOUGHT

The trial court's decision denying Eagar's Motion For Partial Summary Judgment and granting Appellees' Motion for Summary Judgment should be affirmed. The Power of Attorney expressly granted Ray Burrows the right to manage Ida's assets, including the gifting of her personal property. Ray's actions were consistent with his designations as a co-trustee under the Trust and as personal representative of his father's estate. Ray's conduct was also entirely consistent with Ralph and Ida's overall estate plan, and consistent with any duty of loyalty that he had to Ida. Public policy strongly favors upholding the trial court's decision in order to safeguard the validity of a properly executed written instrument -- the Power of Attorney which granted Ray broad gifting

powers and expressly deemed his acts to be those of Ida.

RESPECTFULLY SUBMITTED this 9th day of May, 2007.

SCALLEY READING BATES
HANSEN & RASMUSSEN

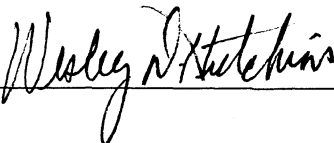
A handwritten signature in cursive script, reading "Wesley D. Hutchins", written over a horizontal line.

Wesley D. Hutchins
Attorneys for Appellees/Defendants

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of May, 2007, I caused to be sent regular U.S. mail, first-class postage pre-paid, two true and exact copies of the foregoing BRIEF OF APPELLEES to the following:

Michael A. Jensen
Attorney at Law
Attorney for Appellant/Plaintiff
P.O. Box 571708
Salt Lake City, UT 84157-1708



ADDENDUM INDEX

- Addendum 1 *Power of Attorney (granted to Eagar for medical decisions).*
- Addendum 2 *Document listing the items chosen by the children.*

Tab 1

Power of Attorney

(Pursuant to Section 75-2-1106, UCA)

I, **IDA B. BUROWS**, of 1081 East 7575 South, Midvale Utah, this date of Oct. 2nd, 1997, being of sound mind, willfully and voluntarily appoint **KAY EAGAR** as my agent and Attorney in-Fact, without substitution, with lawful authority to execute a directive on my behalf under Section 75-2-1105, governing the care and treatment to be administered to or withheld from me at any time after I incur an injury, disease, or illness which renders me unable to give current directions to attending physicians and other providers of medical services.

I have carefully selected my above-named agent with confidence in the belief that this person's familiarity with my desires, beliefs, and attitudes will result in directions to attending physicians and providers of medical services which would probably be the same as I would give if able to do so.

This Power of attorney shall be and remain in effect from the time my attending physician certifies that I have incurred a physical or mental condition rendering me unable to give current directions to attending physicians and other providers of medical services as to my care and treatment.

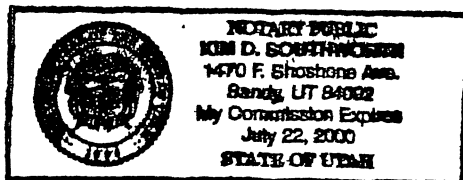
Ida Burton Burrows
IDA B. BUROWS

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

On this date of Oct. 2nd 1997, personally appeared before me **IDA B. BUROWS**, who duly acknowledged to me that she has read and fully understood the foregoing Special Power of Attorney, executed the same of her own volition and for the purposes set forth, and that she was acting under no constraint or undue influence whatsoever.

(Seal)



Kim D. Southworth
Notary Public

Tab 2

ITEM. EACH PERSON IN FAMILY RECEIVED
ON DAY OF DRAWING:

| | | | |
|---|-------------|----|----|
| ✓ | 1- Ray | 16 | 17 |
| ✓ | 2- Kay | 15 | 18 |
| ✓ | 3- Ron | 14 | 19 |
| ✓ | 4- Art | 13 | 20 |
| ✓ | 5- Florence | 12 | 21 |
| ✓ | 6- Linda | 11 | 22 |
| ✓ | 7- Judy | 10 | 23 |
| ✓ | 8- Bill | 9 | 24 |

MEET 5 o'clock

| | | | | | | |
|-----------|---------------------|-------------------------|---------------------------|------------------------------|--------------------------|---|
| RAY: | Needlepoint Picture | BOOK CASE | SNOW BLOWER | W. Woodruff Picture (S) | COMPRESSOR | CHRISTMAS TREE |
| KAY: | Rockers | WIFE, WOODRUFF BOOKS | ORMA BURTON CHAIR - GREEN | PICTURE OVER Bed at Beehive | BIKE | CHURCH BOOKS |
| RON: | Secretary | WHITELEY FEEDER CABINET | POPPY PICTURE | Leaf Blower w/ BAGS | Barbecue | Box 4 white wooden statue |
| ART: | CHEST OF DRAWERS | 410 SHOTGUN | FR. PROV CHEST OF DRAW. | OVAL MIRROR OVER Bed | OLD SPLIT LITTLE TABLE | FLOOR JACK |
| FLORENCE: | DEER | 30 CALIBER RIFLE | COFFEE TABLE | 4 Plates above SINK | BROWN CASSINER in porch | TRUNK |
| LINDA: | Table | CABINET w/ MIRROR | LAMP - BRASS (Aur) | CARDINAL Needlepoint Picture | PITCHER & GLASSES | 2 OVAL POTTERIES in BAS. Relish |
| JUDY: | APPROX. "22" | CLOCK | COUCH | AMERICAN LAMP w/ Roses | VCR | JUDY - SH end table RABBIT LIP |
| BILL: | COLT PISTOL | RUGER PISTOL | HOMEMADE PISTOL | PICTURE PINE TREES / WATER | PAINTING - HORSE ON PIER | TOOLS |

| | | | | | |
|-------|----------------------|----------|------------------------------|-------------------------|------------------------------|
| RAY | LAMP - VSE | AFG | scarf - multi colored | car glasses | Red Vacuum |
| KAY | GRABER WAXE GOLD RIM | AFG | silk quilt | bookcase small | cassette Player + some tapes |
| RON | SAFE | AFG AFG | Barn picture | grinder in garage | blue platform rockers |
| ART | WASHER/ DRYER | AFG | elephant blanket | broken rockers | mobile things owl & heart |
| ELOR. | TRUNK | 2 quilts | rockers & 1st stool pictures | Rug - larger 1st stool | mirror |
| LINDA | CHINA FRUIT BOWL | | bag & quilt | Rug with ivory | green girl pictures |
| JUDY | GOLD SILVERWARE | AFG | makes couch chair rockers | lamp - brass floor lamp | laminar needlepoint |
| BILL | POSTCARDS BOX | AFG | Silverware | afgan | needlepoint |

TO. Next page

Ray

Kay

Ron

Art

Florence

Linda

Judy

Bill

| | | | | |
|---------------------------------|---------------------------|----------------------------|--------------------------|----------------------------|
| Box w/ xmas scarf | 2 watches | drawer of tools | set of dishes | 3 legged table |
| 2 chest of drawers | Kitchen table & chairs | drill & bit | German plate | Fire EXTINGUISHER |
| 2 chest of drawers | copper lamp | battery charger | collection of dishes | white dish set 24 place |
| 2 carving knives | Black music box | wrench & bits | chinese vase & towels | stone dishes |
| 2 pictures | 2 snake pillows | crystal balls | Platter | ice cream chairs |
| Pot w/ flowers | colored pillow | cup & saucer | saucers w/ cups | Footed bowl |
| Table | Rocks & vase | needlepoint | covered box | xmas village pieces |
| 4 Whiteley Burton scrapbooks | Burton gen. books | Rocker with needlepoint | knife & whip | Gloves |