

## UTAH: Dispute over polygamous sect property trust argued before Utah Supreme Court

Written by Brooke Adams, the Salt Lake Tribune  
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Utah's highest court weighed in on the long-running dispute over a polygamous sect's property trust Wednesday with one central question: Why did sect members wait so long to challenge a judge's decision to remove the trust's religious foundation?

Members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints claim their Constitutional rights were violated when a judge reformed the United Effort Plan Trust, transforming it into a secular trust.

Rod Parker, an attorney representing the sect, said the sect initially viewed the trust takeover as a "religious test" but reached a point where they decided "the test was over and they needed to protect the trust."

Parker told the justices he believes there is no time limit for raising constitutional objections in a matter that is "wrapped up in religion." He asked the justices to stay all court proceedings, including sale of land considered sacred by the FLDS, while they consider the sect's petition.

Utah Attorney General Mark Shurtleff sought the trust's takeover in 2005 after its assets were targeted by former FLDS members' lawsuits. He also alleged that the FLDS trustees were mismanaging the trust, which holds property valued at \$110 million in Hildale, Utah; Colorado City, Ariz.; and Bountiful, British Columbia. Trust property consists primarily of homes, several farms, vacant land and some commercial developments.

Third District Judge Denise Lindberg, who presides over the UEP case, rewrote the trust charter in 2006 to exclude religious tenets that included support of polygamy. She ordered that it be managed on "neutral principles."

That, Parker said, allowed FLDS members to be discriminated against and set in motion a "train wreck" in the community.

Parker argued that the district judge had one option after taking over the trust in 2005: To find that the trust had failed and, as required by its then bylaws, deliver its assets to the church's corporate entity.

Justices also challenged Parker on whether the FLDS had exhausted options in the lower court, making any intervention premature and queried him about how trust-related decisions made over the past five years would be handled.

He said the FLDS had been unable to get standing in the lower court and understood they would inherit any obligations of the trust.

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The trust, managed by Salt Lake City accountant Bruce R. Wisan, is saddled with millions in debt and key properties are being sold to cover those expenses -- a move at odds with the state's goal of protecting the property, Parker said.

Jeff Shields, an attorney representing Wisan, told the justices that the fiduciary has managed the trust for the good of all in the community -- not just men, but women and children, too, who were at risk after the former FLDS trustees abdicated their fiduciary duty to protect their homes.

Asked about the trust's original religious premise, Shields said: "That changed."

Shields argued Lindberg correctly viewed the state's involvement in a religious trust as inappropriate, which led to her decision to remake it as a secular entity.

Justice Jill Parrish asked whether the FLDS, by doing nothing, might have contemplated that the trust would fail and thus be returned to the church's corporate entity.

Shields rejected the notion that "religion trumps everything," telling the court Wisan simply wants to distribute property to beneficiaries -- something he said the church opposes because it would lose an avenue for controlling members.

Bill Richards, an assistant attorney general for Arizona, said Utah's trust law makes no provision for a "test of religious faith" and that FLDS were on notice about the state action from the start.

"There was no surprise here. There is no excuse," Richards said.

He also said Lindberg could not allow the trust to fail because its assets would have been delivered to FLDS prophet Warren S. Jeffs, then a fugitive from criminal charges.

Parker rebutted that claim, saying the trust would have gone to the church's business entity and thus the FLDS members, as settlors of the trust intended.

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