

1966

Lynn S. Scott and Ann B. Scott, His Wife, and,
Frank H. Bjorndal and Audrey K. Bjorndal, His
Wife v. Wilford Hansen. and Viola L. Hansen, His
Wife; Cecil Hansen and Ladonna Hansen, His
Wife; Marjorie Baker; Darrell A. Tate; Barbara
Buckley and Michaels S. Tate : Respondent's Brief

Utah Supreme Court

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**IN THE SUPREME COURT
OF THE STATE OF UTAH**

**WYNN S. SCOTT and ANN B.
SCOTT, his wife, and
FRANK H. BJORN DAL and
AUDREY K. BJORN DAL,
his wife,**

Plaintiffs and Appellants,

— vs. —

FILED

JUN 1 1911

Clerk, Supreme Court

**WILFORD HANSEN and VIOLA
L. HANSEN, his wife; CECIL
HANSEN and LADONNA
HANSEN, his wife; MARJORIE
BAKER; DARRELL A. TATE;
BARBARA BUCKLEY and
MICHAEL S. TATE,**

Defendants and Respondents.

RESPONDENTS

**APPEAL FROM A JUDGMENT OF THE
DISTRICT COURT FOR SALT LAKE COUNTY**

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HANSEN, his wife; MARJORIE
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BARBARA BUCKLEY and
MICHAEL S. TATE,
Defendants and Respondents.

Case
No. 10580

RESPONDENTS' BRIEF

STATEMENT OF THE CASE

This is an action brought by plaintiff to quiet title to property located in Salt Lake County. Defendants answered and set forth a description of their property and asked that the title to the property described in their answer be quieted to them. The issue presented by the

evidence, which is largely undisputed, is whether or not the record title of the defendants shall govern over the claim of plaintiff to land not described in their deeds. A roadway running through the defendant's property is claimed by plaintiffs to be the County road referred to in their deeds. The County road referred to in the deeds is, according to the public records, a straight road. A road actually on the property is a crooked road.

DISPOSITION OF THE CASE BY LOWER COURT

The Trial Court quieted title in defendants in accordance with the plats on file in the County Recorder's office. The location of the County road as shown on the plats in the County Recorder's office is also shown in the plaintiff's own abstract of title. (Exhibit P-2)

RELIEF SOUGHT ON APPEAL

Plaintiffs seek to have this Court determine that the plaintiffs are entitled to land which is not described in their deeds because on the land itself there is a road which does not conform to the County Recorder's plats or the plaintiff's own abstract.

STATEMENT OF FACTS

Because of major omissions in the statement of facts as contained in the plaintiff's brief, defendants cannot accept such statement of facts and will therefore restate the facts.

Defendants are the descendants of Andrew Hansen, Jr., who have inherited the property from Andrew Hansen, Jr. He and they have had possession of and title to the property which plaintiffs now claim. Plaintiffs purchased their property in 1955 (R. 34). Their deed is shown at Page 27 of Exhibit P-2, a deed from one Groom to Lynn S. Scott. Groom, the immediate predecessor of plaintiffs, obtained title to the property by a deed dated August 13, 1929, recorded at Page 15 of Exhibit P-2.

The deeds to Groom and to plaintiffs both describe land which has a rectangular shape. The south line and the north line are the same length, that is 80 rods. The claim made by plaintiffs in this action would require that the north line of their property be considerably longer than the south line. The north line would meander along the border of a road which runs through defendant's property. Exhibit No. 1 shows this road. It is curved to an extent that it would be much longer than the straight boundary line along the south line of plaintiff's property. None of the descriptions describe the common boundary as a curved line such the road in place actually follows.

In 1935 the estate of Andrew Hansen, Jr. was probated, case No. 19088. The decree of distribution distributes this property to the defendants. The description makes the south line of their property the north line of plaintiff's property. It is a straight line rather than along the curvature of the road.

Exhibit No. 1 spells out the dispute clearly. Plaintiff's Exhibit No. 2 shows the plats which have always been of record in the County Recorder's office. They show the common line as being a straight line. One of the illustrations of the County road mentioned in the deeds is the third sheet of the abstract. It appears to have been drawn in 1890. (See re-examination certificate following said sheet.) The map of the property which is the last sheet of the abstract also shows the north line of plaintiff's property to be a straight line, on the south side of a straight County road. Stakes marking such a road actually have been found. (R 52)

Plaintiffs purchased the property in reliance on the County records and on the abstract which is their Exhibit P-2.

The area both to the north and to the south of the dispute and the property in dispute as shown on Exhibit No. 1 is open land not cultivated by either of the parties and not occupied by any structures of any kind. The only land which is in any way occupied is the land adjacent which the defendants use and is a known farm.

The land is unfenced. Wilford Hansen testified that no boundary line fence has ever existed, but a fence to control livestock runs along the edge of the road on defendant's property (R. 63).

There is no issue made as to the possession of the defendants or the payment of taxes since the death of their ancestor, Andrew Hansen, Jr.

ARGUMENT

POINT 1

PLAINTIFFS WERE NEVER THE RECORD TITLE HOLDERS OF THE PROPERTY IN DISPUTE.

Plaintiffs introduced as a part of the evidence in their case in chief the abstract of title showing their chain of title. (Exhibit P-2) The exhibit clearly shows that the shape of their land is rectangular with the north line and the south line the same length. (See plat drawn in 1890) The same road is shown to exist on the map of the property which is the last page of the abstract and on Exhibit D-8, a photostat of the Salt Lake County Recorder's records. In addition to these records, plaintiff Scott testified that on the area he had discovered old surveyor's stakes located in the vicinity of where the County road is shown. (R 52)

Exhibit No. 1 shows the County road superimposed on a plat which has drawn in the existing roadway in use. The road in use has never been shown on any public records. Exhibit No. 1 further shows the property line as now quieted by the decision of the Court.

All parties have paid their taxes over the year in accordance with the description that the Court used in quieting title.

If the Court should award to the plaintiffs the land in dispute, it would deprive defendants of the land which has always been described in their deeds. It would award

to the plaintiffs land which they have never had any color of title to and would give to them a windfall.

The Trial Court decision does justice between the parties and properly allocates to each the property to which they have clear title.

POINT II

DEFENDANTS HAVE TITLE BY ADVERSE POSSESSION.

Andrew Hansen, Jr., the ancestor of defendants, through whom all the defendants claim, received title to the property in dispute on the 14th of October, 1913. His deed describes a line along the south side of a County road 80 rods long. (Exhibit P-5)

Between the 14th of October, 1913, and the 25th day of October, 1935, Hansen held under the Thompson deed. (Exhibit P-5) On the 25th of October, 1935, the estate of Andrew Hansen, Jr., was distributed. By the decree of distribution the description of the land was changed so that there was a metes and bounds description which did not refer to the "County road." This description, however, brought the south line of defendant's property to the same point as had formerly been indicated as the south line of the County road. (See Exhibit D-9, a blue-print showing a survey of the property of defendants.) Since October 25, 1935, defendants have held the property under the judgment of the Probate Court. They have paid the taxes on said property and their tax notices

containing the descriptions which the Court used in the decree quieting title. Twenty-nine years passed before plaintiffs filed their complaint in this action claiming a title to the property in dispute.

Defendants rely heavily on *Section 78-12-8, UCA 1953*, which reads as follows:

“Whenever it appears that the occupant, or those under whom he claims, entered into possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree of judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for seven years, the property so included is deemed to have been held adversely.”

Defendants entered into possession of the property under a claim of title. They rely both on a written instrument dated in 1913 and a decree and judgment of the Probate Court dated 1935. They have held the property adverse to plaintiffs for many times seven years.

It will be noted that in *Section 78-12-8* that it is not necessary to hold every part of the property adversely, but only some part of the property need be held adversely. The evidence is undisputed that the defendants or their predecessors farmed continuously a part of the land that came from Thompson and from the Andrew Hansen, Jr., estate.

Section 78-12-9, UCA 1953, subsection 4, provides as follows:

“Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed according to the usual course and custom of the adjoining county is deemed to have been occupied for the same length of time as the part improved and cultivated.”

The land in dispute is open land, hilly and only usable for grazing. It was used by defendants in the same manner as adjoining property was used.

This Court in the recent case of *Cooper v. Carter Oil Company*, 7 U. 2d 9, 316 P. 2d 320, has again reiterated the law that holding for pasturage or grazing even for a short period of each year is sufficient to establish title by adverse possession. In the present case, defendant's position is much stronger since this disputed piece of ground adjoins a piece of ground which is actually farmed and cultivated.

The tax notices placed in evidence by the plaintiffs, Exhibit P-6, not only give a metes and bounds description but give approximate acreage of the various plots of ground which are particularly described. There was no claim made by plaintiffs that the amount of land which was described was short of the estimated acreage on which their taxes were assessed and levied and on which they paid.

It would thus appear that the plaintiffs could not under any circumstances establish title by adverse pos-

session to the disputed territory since their tax notices did not include and they were not taxed on any part of the disputed territory. The County road referred to in their tax notices is obviously the road as shown on Exhibit D-8 in their abstract and which has been surveyed but never opened and used. The plaintiffs presented no evidence of any use of their lands.

Apparently they hold the land only for speculative purposes. This Court has held that holding for speculative purposes is not using for the ordinary use. *Pender v. Jackson, et al*, 123 U. 501, 260 P. 2d 542.

Defendant's title, even if defective in the beginning, could ripen by adverse possession into a fee, while plaintiff's defects have not been cured by the simple passage of time while holding for speculation and making no productive use of the land.

It is respectfully submitted that if there were any serious ambiguity in the deeds from Thompson it was cured by: (a) The County records showing the location of the County road, (b) The description in all of the deeds indicating that the south line of defendant's properties and the north line of plaintiff's properties was a straight line 80 rods in length, (c) The public records over 52 years have set forth the line between the parties on which all of the parties and their predecessors have paid their taxes. These facts are of such great probative weight that no person could doubt but what the County road as shown on the plats was the road intended by Thompson to be the line of demarcation for the prop-

erties conveyed. All of the conduct of the parties since the deeds from Thompson have demonstrated that this interpretation of her intentions is correct.

There is no theory under which the plaintiffs can justify a lawful claim to the property shown on Exhibit No. 1 as the property in dispute. The Trial Court, in quieting defendant's titles in accordance with their tax notice descriptions, correctly resolved the dispute between the parties and has arrived at an equitable and just decision.

CONCLUSION

It is respectfully submitted that the Court should affirm the judgment of the Trial Court and should award defendants their costs incurred in the prosecution of this appeal.

Respectfully submitted this day of
1966.

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