

1966

Juab County Department or Public Welfare v. Gean C. Summers v. Lynn Owen Newton, and Aleen Mattinson Newton, His Wife : Appellant's Brief

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

**JUAB COUNTY DEPARTMENT
OF PUBLIC WELFARE,**
Plaintiff and Respondent,

vs.

GEAN C. SUMMERS,
Defendant and Appellant,

and

**LYNN OWEN NEWTON, and
ALEEN MATTINSON NEWTON,**
his wife,

Defendants.

**CASE
NO. 10584**

UNIVERSITY OF UTAH

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APPELLANT'S BRIEF

Appeal from the Judgment and Order of the
Fifth Judicial District Court for Juab County, State of Utah
HONORABLE C. NELSON DAY, District Judge

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Clerk, Supreme Court, Utah

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LYNN OWEN NEWTON, and
ALEEN MATTINSON NEWTON,
his wife,

Defendants.

**CASE
NO. 10584**

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is an action to foreclose a welfare lien on property located in Juab County, Utah.

DISPOSITION IN LOWER COURT

The case was tried to the Court and from a judgment for the plaintiff, defendant, Gean C. Summers, appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and judgment in her favor as a matter of law, or, that failing, a new trial.

STATEMENT OF FACTS

This case arises because Reuben E. Carter, who was the sole owner of some real property located in Juab County, executed a welfare lien on the 21st day of July, 1955, to Juab County Department of Public Welfare and received a welfare grant which was never repaid. Ruby Carter was the wife of Reuben E. Carter but never held title to the property, but also executed the welfare lien agreement. The property, prior to the deaths of Reuben E. Carter and Ruby Carter, was conveyed to their daughter, Gean Summers, who in turn conveyed the property to defendants herein, Lynn Owen Newton and Aleen Mattinson Newton, his wife. On the 23rd day of January, 1962, plaintiff commenced an action to foreclose the welfare lien.

Both plaintiff, Juab County Department of Public Welfare, and defendant, Gean C. Summers, made motions for summary judgment based upon the pleadings and affidavits on file. The court, on the 2nd day of April, 1965, after considering the pleadings and affidavits on file in the matter, made the following findings:

"1. On July 21, 1955, Reuben Edward Carter and Ruby Carter, his wife, executed to the Juab County Department of Public Welfare a lien agreement covering All of Lot 4, Block 1, Plat A, Mona Townsite Survey, in Juab County, Utah, which being duly acknowledged by such parties, was duly recorded in the office of the Juab County Recorder on July 26, 1955.

as entry No. 91798 in Book 168 at page 46; thereafter and during a number of years the Carters were recipients of welfare payments from the departments of public welfare.

2. Reuben Edward Carter received title to the property by deed in October 1924, and he and his wife resided on the land. He died August 20, 1957. Ruby Carter, the wife, thereafter died on September 12, 1961.

3. Prior to the death of Reuben and Ruby Carter, they executed a deed to the land to their daughter, the defendant, Gean C. Summers, which deed is dated October 10, 1955, and which was recorded on August 23, 1957, three days after Reuben died. The said defendant, Summers, has now conveyed the property to the other defendants Newton, taking back a purchase money mortgage upon which there is owed an amount in excess of the sums claimed by the plaintiff herein." (R-27)

The Court, on the 10th day of May, 1965, sitting without a jury, took evidence in the matter and after both sides had rested, made and entered the following judgment and order:

"1. That the plaintiff have judgment against the defendant Summers, the judgment to foreclose its lien upon the property herein described as follows, to-wit;

All of Lot 4, Block 1, Plat "A", Mona Townsite Survey. Said property being located in Juab County, State of Utah. That the amount of said judgment be in the sum of \$3,448.11, plus interest in the amount of \$879.28, in total judgment of \$4,327.39.

2. That the clerk of the above entitled Court be, and is hereby directed to pay over to the plaintiff and plaintiff's attorney, all sums now held by said clerk

in escrow deposit, being held by said clerk pursuant to prior order of this Court in this matter. Said sums to be credited on the above judgment amount, and said sums to be offset against the amount of plaintiffs lien now had against the defendant Summers. The defendant Newton, are hereby ordered and directed to continue to make payments on the account of the Purchase Money Mortgage referred to in the Findings and Conclusions of Law herein, to the clerk of the above entitled Court. Said payments to continue directly to said clerk until the above judgment is satisfied with interest in full. That all payments made by defendants, Newton, shall be given credit on account of the Purchase Money Mortgage between them and the defendant, Summers." (R-34, 35)

It is from the Court's judgment in the case that this appeal is taken.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN HOLDING THAT THE ACTION WAS NOT BARRED BY SECTION 78-12-26, SUBSECTION 4, UTAH CODE ANNOTATED, 1953.

Defendant, Gean Summers, contends:

That the within action is barred by Section 78-12-26, subsection 4, UCA, 1953, because the action is for a liability created by the statutes of the State of Utah. The public welfare lien agreement signed by Reuben E. Carter and Ruby Carter is only evidence of the lien, as created by the lien statute. The welfare lien liability as of July 21, 1955, would be as set forth in the Session Laws of Utah, 1953, Chapter 90, subsection 1. The Utah Legislature in

1961 repealed all of the sections of the Public Assistance Act that were in existence at the time and enacted an entirely new act known as the Public Assistance Act of 1961, Title 55, Chapter 15, Sections 1 to 39. As of May 9, 1961, the welfare lien liability would be as set forth in Session Laws of Utah, 1957, Chapter 126, Section 30. January 23, 1962, when the action was filed, the welfare lien liability would be as set forth in Section 55-15-30, UCA, 1953, unless modified by the Federal Social Security Act as amended or any rule or regulation of the federal government.

Since May 9, 1961, it appears that the welfare lien liability cannot even be determined with certainty under our present Utah statutes because Section 55-15-11, UCA, 1953, provides:

"The public welfare commission shall accept, in behalf of the state of Utah, and bind the state by such acceptance, any executive or legislative provisions that may be promulgated or enacted by the federal government or any agency thereof, whereby the state of Utah is invited, permitted or authorized to participate in the distribution, disbursement or administration of any fund or service, advanced, offered or contributed in whole or in part by the federal government for purposes consistent with the powers and duties of the department.

If any executive or legislative provisions of the federal government shall require, as a condition to participation by the state of Utah in any fund, property or service, the commission shall expend whatever funds are necessary out of the moneys provided for the use and disbursement of said department by the legislature.

The public welfare commission shall comply with

and conform to all requirements of the Federal Social Security Act as amended, and to all orders, rules and regulations, promulgated, made or adopted pursuant thereto when required as a condition to participation in any benefits under the Social Security Act. If any law passed by the legislature of the state of Utah is not in conformity with the Social Security Act or any rule or regulation of the federal government, the Social Security Act or federal rule or regulation shall take precedence over the part of the state law declared to be out of conformity."

Attention is called to Section 55-15-30, UCA, 1953:

"a. In addition to other eligibility requirements as provided in this act, the following provisions shall apply in establishing eligibility:

(1) In the case of old-age assistance, the department shall require that as a condition precedent to the granting of assistance, all real property or interest in real property belonging to the applicant or recipient, or his or her spouse, or thereafter acquired, shall be pledged to the department as a guarantee for all assistance granted, including, but not limited to, assistance granted under section 55-15-24, except for assistance granted as medical care, exclusive of nursing home care, either as deposits into a pooled fund or directly to a vendor, in the manner hereafter described.

(2) When it becomes necessary for the department to invest money in the home of a recipient, either as a payment for taxes, home or lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, the department may take a lien to secure this capital investment; provided, however, that if a recipient has executed a lien in accordance with (1) above, such

lien shall guarantee repayment of any amounts granted under this paragraph and an additional lien agreement shall not be required.

Any assistance granted after July 1, 1953, to a spouse or other dependent of an old-age recipient who is not eligible for old-age assistance but who participates in the assistance granted to the family unit is recoverable in the same manner as old-age assistance granted to the old-age recipient.

To evidence a pledge, the department shall require each applicant or recipient and his or her spouse to enter into agreement in form approved by the department duly acknowledged so as to entitle it to be filed on record in the office of the county recorder by which the applicant or recipient shall acknowledge and agree that such property has been assigned as security for the reimbursement of all assistance thereafter received by him or her and his or her spouse; provided, however, that in the event the applicant or recipient is living apart from his or her spouse or unusual circumstances exist preventing him or her from obtaining his or her joinder, the lien agreement signed by the applicant or recipient alone may be accepted under such regulations as the department may prescribe.

At the time of the settlement of a lien given in accordance with paragraph (1) [a(1)], there shall be allowed a cash exemption of \$1,000.00, less any assistance granted under the provisions of paragraph (2) [a(2)] of this section, to be deducted from the market or appraised value of such property. When it is necessary to settle an estate the department may grant reasonable costs of sale and settlement of an estate in such amounts as may appear necessary and proper. When both husband and/or wife are recipi-

ents and one or both of them own an interest in real property, the lien shall attach to the interests of both for the reimbursement of assistance received by either or both spouses and but one exemption as provided herein shall be allowed.

(3) In all programs of assistance other than old-age, in the event of the ownership of real property in excess of the limitations of section 55-15-22 of this act, any applicant may, by the execution of a lien, be granted assistance under this act without disposing of any such property, if he shall otherwise qualify for assistance. Assistance so granted may include regular monthly public assistance grants, assistance granted under section 55-15-24, and taxes and home and lot improvements.

The amount of the lien given under the provisions of the foregoing paragraph shall be the total amount of assistance granted up to the market or appraised value of the real property from the execution of the lien until foreclosure thereof. There shall be no exemption of any kind or nature allowed against liens granted under the provisions of this paragraph except assistance in the form of medical care, either as a deposit in a pooled fund or as payments to vendors. When it is necessary to settle an estate the department may grant reasonable costs of sale and settlement of an estate in such amounts as may appear necessary and proper.

The amount of reimbursement of all liens now held by the department as well as all liens subsequently acquired, shall be determined on the basis of the above-described formulas when they become due and payable.

All lien agreements shall be recorded with the county recorder of the county in which the real prop-

erty is located and the recording of the same shall have the same effect as a lien by judgment on any real property in which the applicant or recipient has any title or interest. All such real property, including but not limited to joint tenancy interests, shall from the time of recording of such agreement be and become charged with a lien for all assistance received by the recipient or his or her spouse or dependents as herein provided, which lien shall have priority over all unrecorded incumbrances. No fees or costs shall be paid for such recording.

b. Liens shall become due and payable, and the department shall seek collections of each lien now held or taken:

(1) When the property to which the lien attaches is transferred to a third party prior to the recipient's death; provided, that if other property is purchased by the recipient to be used by him as a home, the department may, in its discretion, transfer the amount of the lien from the property sold to the property purchased.

(2) Upon the death of the recipient and his or her spouse, if any. When the heir or heirs, devisee or devisees of the property are also recipients of public assistance or when other hardship circumstances exist, the department may, in its discretion, postpone settlement of such lien, if such action will be for the best interests of the recipient or recipients and the state.

(3) When a recipient becomes financially able to pay off the lien or voluntarily offers to settle the lien.

c. When a lien becomes due and payable, a certificate in form approved by the department certify-

ing as to the amount of assistance given the recipient and the amount of the lien shall be mailed to the recipient or recipients, heirs or administrators of the estate and the same shall be allowed, approved, filed and paid as a preferred claim as provided in section 79-9-22 (2) [75-9-22 (2)] in the administration of the estate of the decedent. The amount so certified shall constitute the entire claim as of the date of such certificate against the real property of the recipient, or his or her spouse, and any person dealing with the recipient may rely upon such certificate as evidencing the amount of the existing lien against such real estate. Said amount, however, will be enlarged by accruing interest until time of final settlement at the rate of six (6) per cent per annum, commencing ninety (90) days after the lien becomes due and payable.

If the heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department with interest as stated in the above paragraph.

The federal government shall be entitled to share in the net collections thus recovered in substantially the same proportion as federal funds were used to match state funds in the assistance grants paid in any such case, if required as a condition to federal financial participation. All sums so recovered, except those credited to the federal government, shall be retained by the department for use in its authorized activities.

The department shall be empowered to accept voluntary conveyance of real property in satisfaction of its interest therein. All real property acquired by the department under the provisions of this act may be disposed of by public or private sale under such

rules and regulations as may be prescribed by the department. The department is authorized to execute and deliver any and all documents necessary to convey title to any and all such property as may have come into its possession to a purchaser of such property as though such department constituted a corporate entity.

d. Any real property acquired by the department, either by foreclosure or voluntary conveyance, shall be tax exempt, so long as it is so held."

It would appear that if the Federal Social Security Act or any rule or regulation as to the lien, itself, or dealing with the lien, was contrary to Utah Law, the federal rule or regulation would prevail. Section 55-15-11, UCA, 1953, provides the welfare lien liability would be modified to conform to the federal rule or regulation.

In support of defendant's, Gean Summers', position as to the creation of the welfare lien liability, the following citations are given: CJS, Social Security and Public Welfare, Vol. 81, Sec. 31, p. 69, paragraph 1; Camden County Welfare Board vs. Federal Deposit Insurance Company, 62 A2d 416; and Department of Public Welfare of Allen County vs. Potthoff, 44 NE2d 494.

CJS, Social Security and Public Welfare, Vol. 81, Sec. 31, p. 69, paragraph 1, states the proposition in this way, "It is only pursuant to statutory provisions that the authorities may have a lien for assistance furnished."

If the liability is created by statute, then it is necessary to determine when the lien must be foreclosed.

When the liability was created in July of 1955, the

statute in force was Section 55-2-5, UCA, 1953, which provides as follows:

“The public welfare department and any of its representatives are prohibited from taking a lien or assignment of property of any recipient in consideration of any public assistance granted except as hereinafter provided. When it becomes necessary for the public welfare department to invest money in the home of a recipient, either as payment on a mortgage, contract, or for necessary improvements to make the home habitable, then the public welfare department is authorized to take a lien to secure the capital investment. Foreclosure of the lien shall not be sought until the death of the recipient when said recipient is the sole owner of the property or until the death of both husband and wife when the property is held as joint tenants with full rights of survivorship; provided, that when the property is transferred to a third party prior to the death of the recipient or recipients, then foreclosure proceeding shall be sought. When the heir or heirs, devisee or devisees to the property are also recipients of public assistance, the public welfare department may in its discretion waive foreclosure of the lien, if it finds that such action will be for the best interest of the recipient or recipients and the state.”

Section 55-2-5, UCA, 1953, has since been repealed and since May 9, 1961, the applicable section is Section 55-15-30, UCA, 1953, as above set forth.

Under both statutes, it must be observed that there was a duty to foreclose when the property was transferred to a third party. In this case, it would be no later than August 23, 1957, when the deed was recorded. August 20, 1957, when Reuben Carter died, Section 55-2-5, UCA, 1953,

was in force and it would appear that on the death of the sole owner there was a duty to foreclose.

If, in fact, this action is for a liability created by the statutes of this state, the correct statute of limitations to apply would be Section 78-12-26, UCA, 1953, which reads:

"Within three years:

(1) An action for waste, or trespass upon or injury to real property; provided, that when waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass.

(2) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof; provided that in all cases where the subject of the action is a domestic animal usually included in the term "livestock", having upon it at the time of its loss a recorded mark or brand, if such animal had strayed or was stolen from the true owner without his fault, the cause shall not be deemed to have accrued until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(3) An action for relief on the ground of fraud or mistake; but the cause of action in such case shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(4) An action for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special

cases a different limitation is prescribed by the statutes of this state.”

The lower court ruled the statute of limitations that did apply was Section 78-12-23 (2), UCA, 1953, which reads as follows:

“Civil actions can be commenced only within the periods prescribed in this chapter, after the cause of action shall have accrued, except where in special cases a different limitation is prescribed by statute.

Within six years:

(2) An action upon any contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding section.”

Section 78-12-26, UCA, 1953, contains the identical provisions found in Sections 104-2-24 and 104-2-24.10, UCA, 1943. Section 78-12-23, UCA, 1953, is identical with Section 104-2-22, UCA, 1943.

In the case of *Utah Poultry and Farmers Cooperative, Appt., vs. Utah Ice and Storage Company*, 187 F2d 652, 23 ALR2d 1461, the court had the similar problem of construing the appropriate statute of limitations to be applied.

“. . . A three-year period was provided for actions ‘for taking, detaining or injuring personal property.’ and a six-year period ‘for actions upon any contract, obligation or liability founded upon an instrument in writing.’ The warehouse receipt expressly limited the defendant’s liability to the ‘reasonable care and diligence required by law.’

A summary judgment for defendant on the ground that the action was barred by the three-year statute of limitations was affirmed by the United States Court

of Appeals, Tenth Circuit, in an opinion by Murrah, Circuit Judge, which held that the statute was applicable to all actions for injuries to personal property whether relief was sought on a tort or breach of contract theory; but that, even if applicable to actions *ex delicto* exclusively, would govern the case *sub judice* since the warehouse receipt created no duty beyond that imposed by statute so that the action was for violation of a statutory duty."

The court's attention is now called to the fact that similar principles, and identical statutes to those dealt with by the court in the case of *Utah Poultry and Farmers Cooperative, Appt., vs. Utah Ice and Storage Company*, have to be construed in this case. As in the case of *Utah Poultry and Farmers Cooperative, Appt., vs. Utah Ice and Storage Company*, it appears rather clearly that the public welfare lien agreement in this case created no duty beyond that imposed by statute, so that the action was for a liability created by the statutes of the state of Utah.

POINT II

THE COURT ERRED IN HOLDING THAT THE EVIDENCE AS INTRODUCED WAS SUFFICIENT TO SHOW REUBEN E. CARTER OR RUBY CARTER RECEIVED \$3,448.00 OLD-AGE BENEFITS FROM THE JUAB COUNTY DEPARTMENT OF PUBLIC WELFARE.

Plaintiff's complaint is based upon the theory that Reuben E. Carter and Ruby Carter made an application to the Juab County Department of Public Welfare for old-age

assistance under the provisions of the Public Assistance Act of 1947.

That on or about the 21st day of July, 1955, said Reuben E. Carter and Ruby Carter, his wife, executed a public welfare lien agreement to secure the reimbursement of any sums advanced to said applicants. That pursuant to said application and pursuant to application filed with the Utah County Department of Public Welfare, said applicants received a total of \$3,448.00 old-age benefits from the Juab County Department of Public Welfare and the total of \$807.90 old-age benefits from the Utah County Department of Public Welfare.

It is defendant's, Gean Summers', position that to grant judgment on a contract theory, the evidence fails. The complaint claims that Juab County Department of Public Welfare paid out funds, when, in fact and in truth, as shown by the evidence, whatever payments were made were made out of federal funds and state funds, and no funds whatsoever were paid out by the Juab County Department of Public Welfare. (R-4, 6, 16, 24, 26)

The Court also read into the contract a regulation of the Utah State Welfare Department, and based upon this regulation, added six (6) per cent interest.

CONCLUSION

Based upon the foregoing argument and authorities, it appears that this court should enter judgment in favor of Gean Summers and against the plaintiff, Juab County Department of Public Welfare. Gean Summers, the appellant in this case, contends that the within action is for a liability created by the statutes of the state of Utah, the

same is barred by Section 78-12-26 (4), UCA, 1953, and if the action is based upon a written instrument, the proof fails.

Respectfully submitted,

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