

1986

# William D. Blodgett and Florence G. Blodgett, his wife v. Joe Martsch, Betty Purcell, aka Betty Purcell Martsch : Brief of Respondent

Utah Court of Appeals

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## Recommended Citation

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DOCKET NO.

860372-CA

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Plaintiffs-Respondents,

v.

JOE MARTSCH, BETTY PURCELL,  
aka BETTY PURCELL MARTSCH,

Defendants-Appellants.

[illegible]

Case No. 860372-CA

## BRIEF OF RESPONDENTS

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**AUG 17 1987**

## Court of Appeals

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Excerpts from Defendants-Respondents Brief  
in Case No. 86-0178CA (with chronology)

Order and Judgment (certified August 13, 1986)

IN THE COURT OF APPEALS  
FOR THE STATE OF UTAH

---

WILLIAM D. BLODGETT and	:	
FLORENCE G. BLODGETT,	:	
his wife,	:	
	:	
Plaintiffs-Respondents,	:	Case No. 860372-CA
	:	
v.	:	
	:	
JOE MARTSCH, BETTY PURCELL,	:	
aka BETTY PURCELL MARTSCH,	:	
	:	
Defendants-Appellants.	:	

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BRIEF OF RESPONDENTS

JURISDICTION

This case was assigned to the Court of Appeals by the Supreme Court on July 8, 1987. Although the Plaintiffs-Respondents contend that the Defendant-Appellant lacks standing to bring the appeal, jurisdiction would otherwise arise from the filing of a final order in the District Court in a case not specifically designated for direct appeal to the Supreme Court and from its assignment power.

ISSUES PRESENTED ON THE APPEAL

I. Whether this appeal should be dismissed because the Appellant lacks standing to complain about the correction of a clerical error and because the Appellant has quit-claimed all right, title and interest in the subject property.

II. Whether an Appellant who has agreed to a settlement which included quieting title and who subsequently quitclaimed all right, title and interest in the subject property can object to the correction of a judgment to provide the opposing party with quiet title to the property.

III. Whether the correction of a clerical error in a dismissal order to reflect the terms of a settlement agreement and minute order should be affirmed on appeal.

#### STATUTES AND RULES

The following statutes, rules and other materials have been set forth in the addendum ("Ad.") to this brief:

Utah Code Ann. § 57-1-13

Utah Code Ann. § 78-51-36

Rule 60(a), Utah Rules of Civil Procedure

Excerpts from Defendants-Respondents' brief in

Case No. 86-0178CA ("Alco Appeal Brief")

Order and Judgment (certified August 13, 1986)

#### REQUEST TO TAKE JUDICIAL NOTICE

The Plaintiffs-Respondents request that this Court take judicial notice of pleadings, orders, decisions, exhibits and opinions in related actions, deeds and other like documentary materials. The Plaintiffs-Respondents have moved the Court to consolidate this matter with another pending case involving the subject property: William D. Blodgett and Florence G. Blodgett, Plaintiffs-Respondents, v. Zions First National Bank, Defendant, Stanley L. Pace and Allan D. McComb,

individually and dba ALCO Investment, Defendants-Appellants,  
No. 86-0178-CA. From time to time, this brief will cite to  
the record in that case as "Alco record".

#### STATEMENT OF THE CASE

##### 1. The Parties.

The Plaintiffs-Respondents William D. Blodgett and his wife Florence G. Blodgett (the "Blodgetts") were owners of two tracts of property in Salt Lake County. That property is the subject of this action and has been the subject of six other legal proceedings involving them.

The Defendant-Appellant Betty Purcell, also known as Betty Purcell Martsch, was formerly the president of the Raco Car Wash System ("Raco"). Ms. Purcell instigated a scheme to use the Blodgetts' property as security for her proposed car wash ventures.

##### 2. The Underlying Facts.

Ms. Purcell's statement of facts omits several crucial and undisputed facts which explain why judgment quieting title was entered by the District Court in this case.

This case is the culmination of the transactions beginning in 1971 when Ms. Purcell and Raco falsely represented to a bank that two tracts of land owned by the Blodgetts could be used as security for a loan to Raco. The Blodgetts had agreed to permit only one tract to be used as security, but they were deceived into signing papers covering two tracts. Raco fell into arrears on the loan, and both tracts



were taken from the Blodgetts under foreclosure proceedings which were improperly conducted. Extensive proceedings followed. In a suit against Ms. Purcell and others, the Blodgetts recorded a lis pendens on the property on November 4, 1974 with the Salt Lake County Recorder in Book 3714, Page 334, giving notice that they had filed suit to terminate the interests of all defendants, including Ms. Purcell. See Blodgett v. Martsch, 590 P.2d 298 (Utah 1978).

After a motion for summary judgment and an appeal with a remand to the District Court, the parties to the Blodgetts' litigation agreed on the record to a settlement of their disputes which included quieting title to the disputed property in the Blodgetts. The settlement terms were recited and approved in open court on December 7, 1979, before Judge Baldwin. The settlement terms stated by counsel and court were, in relevant part:

MR. BUSHNELL [attorney for the Blodgetts]:  
We'll get the quit-claims we want signed,  
you get the releases and satisfactions you  
want signed. Why don't you prepare the  
release you want for the bank and get the  
check and we'll go from there. Will that be  
all right?

THE COURT [Judge Baldwin]: A dismissal with  
prejudice of the action.

MR. BUSHNELL: We'll prepare the dismissal.

MR. BARKER [attorney for Betty Purcell]: If  
you want quit-claim deeds, we are going to  
mail them to Idaho and get them back. This  
is a few days mail time.

MR. BUSHNELL: Lets get all of it done plus that-- well--

MR. BARKER: If you can do it by the Court Order and quiet title to the matter--

MR. BUSHNELL: Let's get the deed too.

THE COURT: All right.

MR. BARKER: Very good.

(Alco Record 103-07, emphasis added.)

In its minute order, the District Court referred to the terms set forth on the record as the terms which were agreed to in settlement. On January 15, 1980, Ms. Purcell executed a quitclaim deed and delivered it to the Blodgetts pursuant to the terms approved in the Settlement Order. (Alco Record 109-12) Because of clerical oversight, the final Stipulation of Dismissal signed by the parties and Order entered in the case on May 5, 1980, did not quiet title but only dismissed all claims with prejudice. (Record 990, copies of the Stipulation and Order are attached to Ms. Purcell's brief.)

At about the time that Ms. Purcell was involved in using the Blodgett's property to secure the Raco loan, Ms. Purcell, together with her former attorney Lorin Pace, also obtained a separate loan from Zions First National Bank ("Zions"). Ms. Purcell and Mr. Pace both signed a promissory note in connection with the Zions loan. The Zions loan subsequently fell into default. Zions brought three court proceedings against Ms. Purcell and Mr. Pace and took default judgments against both parties to the note. Mr. Pace paid Zions

pursuant to a default judgment, and Zions purportedly assigned its default judgments against Ms. Purcell to Alco Investment, which apparently took the assignment from Zions pursuant to an agreement between Mr. Pace and Alco. Alco's principals were Stanley L. Pace and Allan D. McComb. (See the excerpts from the Respondents' brief in that case in the Addendum for citations and further details.)

In its efforts to recover against Ms. Purcell on the assignment of the Zions default judgments, Alco attempted to foreclose on the Blodgetts' land because Ms. Purcell had had, at one time, an interest in the property. (The details are set forth in the excerpts from the Alco Appeal brief in the Addendum.)

Alco's foreclosure efforts showed that although Ms. Purcell had quitclaimed all of her right, title and interest in the Blodgetts' land to the Blodgetts and had agreed to the terms of a court settlement including quieting title to the Blodgetts, no judgment or other document recorded the language of quieting title to that land in the Blodgetts. The Blodgetts thus took steps under Rule 60 of the Utah Rules of Civil Procedure to correct the error in the prior judgment, incorrectly denominating their initial motion under Rule 60(b) rather than as a clerical correction under Rule 60(a) to supply the terms of "quiet title" as they had been read into the record before the District Court. That mistake was subsequently recognized and an order and judgment of quiet title was

entered pursuant to Rule 60(a) on August 13, 1986, upon signature of Honorable David B. Dee. (A copy is appended to Ms. Purcell's brief.)

That Order and Judgment to Quiet Title did not contain the hand-written word "Amended" at the time signed. The first page of a certified copy of that Order and Judgment shows that it was filed in the Clerk's Office on August 13, 1986 and that it was recorded on August 15, 1986 with the Recorder in Salt Lake County. Counsel for the Blodgetts obtained a certified copy of that Order and Judgment on August 13, 1986. A copy of the Order and Judgment of Quiet Title showing the Clerk's and the Recorder's stamps is set forth in the Addendum. At some other date, some party unknown to the Blodgetts apparently added the handwritten word "Amended" to the first page. The copy of the Order and Judgment attached to Ms. Purcell's brief shows the stamp showing filing with the clerk's office on August 13, 1986, but does not show the stamp of the County Recorder. It is also not a certified copy, as is the copy which had been relied upon by the Blodgetts. In short, at the time the Order and Judgment was signed by Judge Dee, it was not denominated as "Amended".

On January 16, 1986, the District Court, per Sawaya, J., denied summary judgment to Alco, Stanley L. Pace and Allen D. McComb and granted judgment to the Blodgetts, providing: "Title to the above-identified real property is quieted in the plaintiffs [the Blodgetts] as against any and all right, ti-

tle, or interest claimed by the defendants, Zions First National Bank and Stanley L. Pace and Allen D. McComb dba Alco Investment." Since those defendants sought to foreclose on the property solely because of Ms. Purcell's prior interests in the property, the January 16, 1986 decision of the District Court quieting title in the Blodgetts also resolves any claims of Ms. Purcell. (See the excerpts from the Alco Appeal brief in the Addendum.)

#### SUMMARY OF ARGUMENT

Since Ms. Purcell quitclaimed all right, title and interest to the property to the Blodgetts more than two years ago, the fact that the Blodgetts have quieted title to that property in themselves causes no grievance of any sort to Ms. Purcell. Quieting title neither vests title nor increases the rights that the Blodgetts already had pursuant to the quitclaim deed, so Ms. Purcell has suffered no loss or injury. With no loss or injury, she has no standing to appeal from an order which merely corrected an old judgment. Moreover, since the initial litigation proceedings between the Blodgetts and Ms. Purcell involved the filing of a lis pendens by the Blodgetts, the resolution of the dispute over the property was binding upon Ms. Purcell and divested her of all claims of right, title or interest in that property.

Since the correction was not a "further proceeding" and since her prior attorney has neither died nor in any way been limited from practice in Utah, the Blodgetts were under

no statutory duty or obligation to advise her to obtain other title before correcting a clerical error in an old judgment. There is no irregularity in the procedure.

Courts have at any time the power to correct clerical errors under Rule 60(a); the error in question was merely that so the correction was proper. The fact that the Blodgetts initially referred to Rule 60(b) before correcting their application for corrective action does not give rise to an appealable issue or cause any problem in the corrected judgment.

#### ARGUMENT

##### I. A PARTY WHO HAS AGREED TO QUIET TITLE AND HAS QUITCLAIMED ALL RIGHT, TITLE AND INTEREST IN A PROPERTY SHOULD BE PRECLUDED FROM CONTESTING A CLERICAL CORRECTION TO A JUDGMENT

Since it is undisputed that the Blodgetts had filed a lis pendens in 1974 on the subject property, any interest which Ms. Purcell had against the property is subject to the lis pendens. Her interest was extinguished when the Blodgetts prevailed in their litigation against her, and she is bound by the results of the case.

Ms. Purcell agreed to a settlement which dismissed all claims and which provided for quieting title in the Blodgetts, as stated on the record of the trial court. She subsequently signed and delivered a quitclaim deed to the subject property. The quitclaim, by statute, abolished and surrendered all of her right, title and interest in the

property so quitclaimed to the Blodgetts. Utah Code Ann.

57-1-13 provides that

Such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance.

The District Court, in two proceedings, has recognized that Ms. Purcell has no interest in the subject property: in this proceeding and in the Alco proceeding. The District Court recognized in that case that title had been quieted in the Blodgetts with respect to the claims there related to her. (An appeal is pending in that case, No. 860178CA.)

Consequently, Ms. Purcell lacks standing to object to the order and judgment which correctly reflects the title quieted in the Blodgetts. This appeal should be dismissed.

II. THE JUDGMENT TO QUIET TITLE DOES NOT  
ADD OR CONFER NEW RIGHTS ON THE BLODGETTS OR  
TAKE ANY RIGHTS FROM MS. PURCELL

Because of her quitclaim in settlement of complicated litigation, Ms. Purcell has no right, title or interest in the property. Consequently, she has suffered no injury whatsoever because the Blodgetts have corrected a judgment to reflect the terms of the settlement by quieting title in them. They gained nothing which they did not already have, and Ms. Purcell has lost nothing. If she has lost nothing, then she has no injury and no claim. She lacks standing, she lacks a

claim upon which relief could be granted, and she lacks any legal or equitable reason to justify this appeal.

Both Supreme Court decision and statute demonstrate that a quiet title action quiets an existing title and does not establish title. As the Supreme Court has determined:

We are compelled to conclude that the decree quieting title did not constitute a vesting of title. Our conclusion is premised upon the fact that a quiet title action, as its name connotes, is one to quiet an existing title against an adverse or hostile claim of another and not one brought to establish title. One seeking such equitable relief must allege title, entitlement to possession, and that the estate or interest claimed by others is adverse or hostile to the alleged claims of title or interest. Hence it is to be seen that the effect of a decree quieting title is not to vest title but rather is to perfect an existing title as against other claimants.

State, Etc. v. Santiago, 590 P.2d 335, 337-38 (Utah 1979)

(footnotes to citations omitted)

In this case, the Blodgetts were engaged in litigation adverse to Ms. Purcell and others. They had filed a lis pendens on the subject property. They resolved the case by settlement in open court, including quieting title to the property. Ms. Purcell quitclaimed. Title thus resided in the Blodgetts upon the settlement of that case. When the Alco litigation erupted and Alco tried to claim the property because Ms. Purcell had once had an interest in it, it was necessary for the Blodgetts to defend their property by correcting an old judgment to reflect the outcome of prior suits. Under



such circumstances, even though somewhat complex, only one simple conclusion can be reached: Ms. Purcell has lost nothing, the Blodgetts have gained nothing, and no new title has vested; title has only been perfected as it has existed for over a decade. This appeal should be dismissed.

III. CORRECTION OF CLERICAL ERRORS SHOULD NOT BE  
APPEALABLE; THE SUBSTANCE OF A TRANSACTION IS  
DETERMINATIVE OF ITS MERITS

When the Blodgetts were surprised by the efforts of Alco and its principals to take their property, they took immediate steps to rectify what was, in fact, a clerical or mechanical error in the recording of the judgment. While it was abundantly clear that all litigation had been resolved and that the Blodgetts were to retain the property which had been in question, the final dismissal order was a simple one, prepared in summary form to rid the parties of the burdens of further litigation and to dismiss all claims.

In conjunction with that settlement, Ms. Purcell, as stated, delivered her quitclaim deed. The mechanical error arose because the judgment did not record the oral settlement by reciting the formulary words "quiet title", although that was clearly the central term of the settlement and the reason why it was acceptable to the Blodgetts. Inadvertently, everyone relied on the simple settlement dismissing all claims with prejudice and the delivery of the quitclaim deed.

The Alco efforts to obtain the property revealed the oversight, justifying a correction under Rule 60. The motion

for the correction was originally brought under Rule 60(b), although it should have been done under Rule 60(a). This matter was discussed in District Court and rectified. The District Court clearly recognized the need to correct the clerical error. Such is the substance of the transaction; it does not give rise to an appealable order. Such corrections of errors may even be made after an appeal has been taken. See Bagnall v. Suburbia Land Co., 579 P.2d 917 (Utah 1978).

If this Court were to vacate the corrected judgment, thus requiring further proceedings below, then hearings on the meaning and terms of the settlement would occur. The result would undoubtedly be that the Blodgetts were entitled to quiet title, and an appropriate judgment reflecting the quiet title language would be entered. Ms. Purcell would, as here, have lost nothing in such proceedings--except the time and costs necessary to prolong litigation. She could gain nothing from those proceedings. Further proceedings in this matter would be superfluous. Indeed, it appears that the only possible motivation for the attempted appeal in this case is that Ms. Purcell knows that Alco and its principals are trying to collect against her in connection with her default on the loan to Zions; it would be much to her advantage if Alco could collect against property in which she no longer has any interest rather than against her current assets.

IV. THERE HAS BEEN NO VIOLATION OF STATUTE  
CONCERNING MS. PURCELL'S COUNSEL

Ms. Purcell's argument that the corrected judgment was taken against her improperly because she had no notice to obtain counsel is flawed. Utah Code Ann. § 78-51-36, the statute she cites, is limited to the situation "When an attorney dies or is removed or suspended" from practice. Ms. Purcell's former attorney, Ronald C. Barker, Esq., is a practicing attorney. The statute does not apply if the attorney has withdrawn from the case or if there are other circumstances in which he chooses not to represent a client; it applies only if he dies or is disbarred or otherwise removed or suspended from the practice of law. Van Cott v. Wall, 53 Utah 282, 170 P. 42 (Utah 1918), see also Security Adjustment Bureau, Inc. v. West, 20 Utah 2d 292, 437 P.2d 214 (Utah 1968).

Utah Code Ann. § 78-51-36 is further limited to the situation when "further proceedings" are to be had against the party whose attorney is no longer representing him. In this situation, the Blodgetts sought no "further proceedings." Rather, the Blodgetts sought to correct the judgment in the old and existing proceedings. They were simply reciting in their judgment that which Ms. Purcell and her counsel had agreed to before: that title be quieted in the Blodgetts. The correction of a clerical error or other mistake under Rule

60(a) cannot be construed as a "further proceeding." No violation of any obligation has occurred.

V. THE TRIAL COURT PROPERLY ENTERED THE ORDER AND  
JUDGMENT TO QUIET TITLE PURSUANT TO  
RULE 60(a)

To correct the error in the original dismissal order, the Blodgetts served Ms. Purcell and filed on March 17, 1986 a Motion to Set Aside Order of Dismissal and Enter Judgment of Quiet Title under Rule 60(a). That Rule provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(Emphasis added)

In Stanger v. Sentinel Sec. Life Ins. Co., 669 P.2d 1201, 1206 (Utah 1983), this Court construed Rule 60(a), defining a clerical mistake as one which is mechanical in nature, is apparent on the record and does not involve a legal decision or judgment by an attorney. The distinction between a judicial error and a clerical error does not depend upon who made it; rather, the distinction depends on whether it was made in entering the judgment (judicial error) or in recording or reflecting the judgment as rendered (clerical error). See Richards v. Siddoway, 24 Utah 2d 314, 471 P.2d 143, 145 (1970). Corrections contemplated by Rule 60(a) must be undertaken for the purpose of reflecting the actual intention

of the court and the parties. See Lindsay v. Atkin, 680 P.2d 401, 402 (Utah 1984).

Under the criteria set forth in Stanger, Richards and Lindsay, the omission of the quiet title language in the Dismissal Order constituted a "clerical error." The error was mechanical and occurred in the course of recording or reflecting a judgment, since the court agreed to a "quiet title" in the record but the written judgment neglected to recite the formulary words. Making the correction required no decision or judgment of an attorney; the correction arose naturally and from the plain records of the settlement which had been approved by Judge Baldwin. Certainly Ms. Purcell has no complaint about it since she has already delivered a quit-claim deed.

In Meagher v. Equity Oil Co., 5 Utah 2d 196, 299 P.2d 827 (1956), this Court reviewed a case in which the trial judge signed an order on the erroneous assumption that the order, as prepared by counsel, correctly reflected his judgment in the matter. The Supreme Court held that the execution of the order was a mistake of a perfunctory or clerical nature since the order did not accurately reflect the result of the trial court's judgment and that the trial court could and properly did correct the error upon its own motion.

In this case, the trial judge executed an order, assuming that all aspects of the settlement previously approved had been covered. The error was perfunctory and clerical.

cal. It was properly correctable by the Blodgetts' Rule 60(a) motion. This appeal is thus lacking in merit and should be dismissed. The corrected order should be affirmed.

CONCLUSION

For the foregoing reasons, the Blodgetts respectfully request that this appeal be dismissed, that the judgment correcting the original dismissal order in their favor be affirmed and that the Court award them their costs, disbursements and counsel fees on this action. They seek such other and further relief as may be just and proper.

DATED: August 14, 1987.

Respectfully submitted,  
KIRTON, McCONKIE & BUSHNELL

By \_\_\_\_\_  
M. Karlynn Hinman

MAILING CERTIFICATE

I hereby certify that on this \_\_\_\_ day of August,  
1987, I mailed four true and correct copy of the foregoing  
Brief of Respondents, postage prepaid, to:

James A. Arrowsmith  
2102 East 3300 South  
Salt Lake City, Utah 84109

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CONTENTS OF THE ADDENDUM

Utah Code Ann. § 57-1-13

Utah Code Ann. § 78-51-36

Rule 60(a), Utah Rules of Civil Procedure

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in Case No. 86-0178CA (with chronology)

Order and Judgment (certified August 13, 1986)



in which such real estate is situated, but shall be valid and binding between the parties thereto without such proofs, acknowledgment, certification or record, and as to all other persons who have had actual notice. Neither the fact that an instrument, recorded as herein provided, recites only a nominal consideration, nor the fact that the grantee in such instrument is designated as trustee, or that the conveyance otherwise purports to be in trust without naming the beneficiaries or stating the terms of the trust, shall operate to charge any third person with notice of the interest of any person or persons not named in such instrument or of the grantor or grantors; but the grantee may convey the fee or such lesser interest as was conveyed to him by such instrument free and clear of all claims not disclosed by the instrument or by an instrument recorded as herein provided setting forth the names of the beneficiaries, specifying the interest claimed and describing the property charged with such interest. 1953

**57-1-7. Applicability of section.**

This act shall apply to all instruments, whether recorded prior to or subsequent to the effective date hereof, but as to instruments which have been recorded prior thereto, it shall not apply until one year from its effective date. 1953

**57-1-8. Powers of attorney - To be recorded.**

Every power of attorney, or other instrument in writing, containing a power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded, as conveyances whereby real estate is conveyed or affected are required to be acknowledged or proved and certified and recorded. 1953

**57-1-9. Revocation to be recorded.**

No such power of attorney or other instrument shall be deemed to be revoked by any act of the person by whom it was executed until the instrument containing such revocation shall be filed for record in the same office in which the instrument containing the power is recorded, or until it is canceled of record as provided by law. 1953

**57-1-10. After-acquired title passes.**

If any person shall hereafter convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, his heirs, successors or assigns, and such conveyance shall be as valid as if such legal estate had been in the grantor at the time of conveyance. 1953

**57-1-11. Claimant out of possession may convey.**

Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof. 1953

**57-1-12. Form of warranty deed - Effect.**

Conveyances of land may be substantially in the following form:

**WARRANTY DEED**

\_\_\_\_\_ (here insert name), grantor, of \_\_\_\_\_ (insert place of residence), hereby conveys and

warrants to \_\_\_\_\_ (insert name), grantee, of \_\_\_\_\_ (insert place of residence), for the sum of \_\_\_\_\_ dollars, the following described tract \_\_\_\_\_ of land in \_\_\_\_\_ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Such deed when executed as required by law shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of the premises therein named, together with all the appurtenances, rights and privileges thereunto belonging, with covenants from the grantor, his heirs and personal representatives, that he is lawfully seised of the premises; that he has good right to convey the same; that he guarantees the grantee, his heirs and assigns in the quiet possession thereof; that the premises are free from all encumbrances; and that the grantor, his heirs and personal representatives will forever warrant and defend the title thereof in the grantee, his heirs and assigns against all lawful claims whatsoever. Any exceptions to such covenants may be briefly inserted in such deed following the description of the land. 1953

**57-1-13. Form of quitclaim deed - Effect.**

Conveyances of land may also be substantially in the following form:

**QUITCLAIM DEED**

\_\_\_\_\_ (here insert name), grantor, of \_\_\_\_\_ (insert place of residence), hereby quitclaims to \_\_\_\_\_ (insert name), grantee, of \_\_\_\_\_ (insert place of residence), for the sum of \_\_\_\_\_ dollars, the following described tract \_\_\_\_\_ of land in \_\_\_\_\_ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance. 1953

**57-1-14. Form of mortgage - Effect.**

A mortgage of land may be substantially in the following form:

**MORTGAGE**

\_\_\_\_\_ (here insert name), mortgagor, of \_\_\_\_\_ (insert place of residence), hereby mortgages to \_\_\_\_\_ (insert name), mortgagee, of \_\_\_\_\_ (insert place of residence), for the sum of \_\_\_\_\_ dollars, the following described tract \_\_\_\_\_ of land in \_\_\_\_\_ County, Utah, to wit: (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, maturity, rate of interest, by and to whom payable and where).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of \_\_\_\_\_ dollars attorneys' fee in case of foreclosure.

Witness the hand of said mortgagor this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Such mortgage when executed as required by law shall have the effect of a conveyance of the land therein described, together with all the rights, privileges and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns and legal representatives, as security for the payment of the indebtedness

not otherwise.

(3) To receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment, unless a revocation of his authority is filed, and, upon payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. 1953

**78-51-33. Proof of authority for appearance.**

The court may on motion of either party and on the showing of reasonable grounds therefor require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove by his own oath or otherwise the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the parties for whom he assumes to appear. 1953

**78-51-34. Change of attorney.**

The attorney in any action or special proceeding may be changed at any time before judgment or final determination, as follows:

(1) Upon his own consent, filed with the clerk or entered upon the minutes.

(2) Upon the order of the court or judge thereof upon the application of the client, after notice to the attorney. 1953

**78-51-35. Effect - Notice of change.**

When an attorney is changed as provided in the next preceding section [78-51-34], written notice of the change and of the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party; until then he must recognize the former attorney. 1953

**78-51-36. Notice to appoint successor.**

When an attorney dies or is removed or suspended, or ceases to act as such, a party to an action or proceeding for whom he was acting as attorney must before any further proceedings are had against him be required by the adverse party, by written notice, to appoint another attorney or to appear in person. 1953

**78-51-37. Conviction of crime - Judgment of disbarment - Duty of clerks of court.**

Upon conviction of an attorney and counselor of felony, or misdemeanor involving moral turpitude, the judgment of the Supreme Court must be that the name of the accused be stricken from the roll of attorneys and counselors of the court, and that he be precluded from practicing as such attorney or counselor in all the courts of this state; upon conviction in other cases, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as an attorney or counselor in the courts of this state permanently or for a limited period. The clerk of the court in which any such conviction is had must within thirty days thereafter transmit to the Supreme Court a certified copy of the record of conviction, which shall be conclusive evidence thereof. 1953

**78-51-38. Suretyship - Attorney forbidden to assume.**

No practicing attorney and counselor shall become a surety in any civil or criminal action or proceeding in which he is engaged as attorney. 1953

**78-51-39. Certain officials not to practice law.**

Sheriffs, clerks of courts and constables, and their deputies, are prohibited from practicing law or acting as attorneys and counselors, or from having as a partner an attorney and counselor or any one who acts as such. 1953

**78-51-40. Corporations and associations forbidden to practice - Exceptions.**

It shall be unlawful for any corporation or voluntary association, except such as are organized for benevolent or charitable purposes, or organizations approved by the Supreme Court and formed for the purpose of assisting persons without means in the pursuit of civil remedies, to hold itself out to the public by advertisement or otherwise as being entitled to practice law or to furnish attorneys or counselors, or to render legal services or advice of any kind in any action or proceeding, or to solicit directly or indirectly any claim or demand for the purpose of bringing action thereon. Any corporation or voluntary association violating any of the provisions of this section is liable to a fine of not more than \$5,000; and every officer, agent or employee of such corporation or voluntary association who directly or indirectly engages on behalf of such corporation or voluntary association in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, is guilty of a misdemeanor. The fact that such officer, agent or employee is a duly and regularly licensed attorney at law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. 1953

**78-51-41. Compensation - Lien.**

The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor and to the proceeds thereof in whosoever hands they may come, and cannot be affected by any settlement between the parties before or after judgment. 1953

**78-51-42. Refusing to pay over money - Penalty.**

An attorney and counselor who receives money or property of his client in the course of his professional business and who refuses to pay or deliver the same to the person entitled thereto within a reasonable time after demand is guilty of a misdemeanor. 1953

**78-51-43. Exception - Demand for bond.**

When an attorney and counselor claims to be entitled to a lien upon money or property of his client in his possession he is not liable to the penalty of the next preceding section [78-51-42], unless he neglects or refuses to pay or deliver such money or property to the person entitled thereto upon such person giving a bond with sufficient surety, to be approved by the clerk of the district court, conditioned for the payment of the amount of such attorney's claim when legally established. 1953

**78-51-44. Exception on giving bond.**

Nor shall the attorney and counselor be liable as aforesaid, if he shall give a sufficient bond, to be approved by the clerk of the district court, conditioned that he will pay or deliver the whole or any portion of such money or property to the claimant in the event such claimant shall finally establish his right thereto. 1953

**Part VII. Court Reporters and Stenographers**

Dev. Corp. v. Sather, 605 P.2d 1240 (Utah 1980).

Cited in National Farmers Union Property & Cas. Co. v. Thompson, 4 Utah 2d 7, 286 P.2d 249 (1955); Holmes v. Nelson, 7 Utah 2d 435, 326 P.2d 722 (1958); Howard v. Howard, 11 Utah 2d 149, 356 P.2d 275 (1960); Nunley v. Stan Katz Real Estate, Inc., 15 Utah 2d 126, 388 P.2d 798 (1964); Hanson v. General Bldrs. Supply Co., 15 Utah 2d 143, 389 P.2d 61 (1964); James Mfg. Co. v. Wilson, 15 Utah 2d 210, 390 P.2d 127 (1964); Porcupine Reservoir Co. v. Lloyd W. Keller Corp., 15 Utah 2d 318, 392 P.2d 620 (1964); Watson v. Anderson, 29 Utah 2d 36, 504 P.2d 1003 (1973); Nichols v.

State, 554 P.2d 231 (Utah 1976); Edgar v. Wagner, 572 P.2d 405 (Utah 1977); Time Com. Fin. Corp. v. Brimhall, 575 P.2d 701 (Utah 1978); Anderton v. Montgomery, 607 P.2d 828 (Utah 1980); Miller Pontiac, Inc. v. Osborne, 622 P.2d 800 (Utah 1981); Mulherin v. Ingersoll-Rand Co., 628 P.2d 1301 (Utah 1981); Kohler v. Garden City, 639 P.2d 162 (Utah 1981); Pozzolan Portland Cement Co. v. Gardner, 668 P.2d 569 (Utah 1983); Nelson v. Jacobsen, 669 P.2d 1207 (Utah 1983); Golden Key Realty, Inc. v. Mantas, 699 P.2d 730 (Utah 1985); Estate of Kay, 705 P.2d 1165 (Utah 1985); York v. Unqualified Washington County Elected Officials, 714 P.2d 679 (Utah 1986).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 58 Am. Jur. 2d New Trial §§ 11 to 14, 29 et seq., 187 to 191.

**C.J.S.** — 66 C.J.S. New Trial §§ 13 et seq., 115, 116, 122 to 127.

**A.L.R.** — Consent as ground of vacating judgment, or granting new trial, in civil case, after expiration of term or time prescribed by statute or rules of court, 3 A.L.R.3d 1191.

Propriety and prejudicial effect of suggestion or comments by judge as to compromise or settlement of civil case, 6 A.L.R.3d 1457.

Necessity and propriety of counter-affidavits in opposition to motion for new trial in civil case, 7 A.L.R.3d 1000.

Quotient verdicts, 8 A.L.R.3d 335.

Propriety and prejudicial effect of instructions in civil case as affected by the manner in which they are written, 10 A.L.R.3d 501.

Prejudicial effect of unauthorized view by jury in civil case of scene of accident or premises in question, 11 A.L.R.3d 918.

Propriety and prejudicial effect of reference by counsel in civil case to result of former trial

of same case, or amount of verdict therein, 15 A.L.R.3d 1101.

Absence of judge from courtroom during trial of civil case, 25 A.L.R.3d 637.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 A.L.R.3d 126.

Amendment, after expiration of time for filing motion for new trial, in civil case, of motion made in due time, 69 A.L.R.3d 845.

Authority of state court to order jury trial in civil case where jury has been waived or not demanded by parties, 9 A.L.R.4th 1041.

Deafness of juror as ground for impeaching verdict, or securing new trial or reversal on appeal, 38 A.L.R.4th 1170.

Jury trial waiver as binding on later state civil trial, 48 A.L.R.4th 747.

**Key Numbers.** — New Trial ⇐ 13 et seq., 110, 116.

### Rule 60. Relief from judgment or order.

(a) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a

## STATEMENT OF THE CASE

### 1. The Parties.

William D. Blodgett and his wife Florence G. Blodgett (the "Blodgetts") were owners of property in Salt Lake County which they seek to protect from foreclosure by Alco Investment ("Alco"), whose partners are Stanley L. Pace ("Stanley Pace") and Allan D. McComb ("McComb").

Although Stanley Pace and McComb purport to be partners under the name Alco Investment (R.60 ¶ 3, R. 71 ¶ 3), the records of the Department of Business Regulation, Division of Corporations and Commercial Code do not list them as current registrants of the name "Alco Investment". The Division of Corporations and Commercial Code reports that Allan D. McComb and Colleen C. McComb filed an application to do business under an assumed name, DBA Alco Investment, on September 22, 1976. Their DBA expired September 22, 1984, as shown by a Certificate from the Director, Division of Corporations and Commercial Code. (Ad. 4-5.)

Alco's foreclosure efforts began in 1985 and were made pursuant to an assignment of a judgment lien from Zions First National Bank ("Zions") to Alco after Zions had received payment of a default judgment on a promissory note made by Lorin N. Pace ("Lorin Pace"), father of Stanley Pace, and Betty Purcell (aka "Betty Purcell Alexander" or "Betty Purcell Martsch" and sometimes spelled "Pursell"). Zions did not receive payment from co-

maker Betty Purcell. Zions is not a party to this appeal and stated in its answer to the complaint that:

18. Zions affirmatively alleges that it claims no interest in the subject property.  
(R. 68 ¶ 18.)

2. The Underlying Facts.

This case is the culmination of some fifteen years of transactions and six court proceedings, including an appeal to this Court, in which various persons and entities have claimed an interest in the Blodgetts' land.

The Blodgetts' problems began in 1971 when Raco Car Wash Systems ("Raco"), whose president was Betty Purcell, falsely represented to a bank that two tracts of Blodgett land could be used as security for a loan to Raco. The Blodgetts had agreed with Raco that only one tract could be used as security but were deceived into signing papers covering two. They have been trying to recover their property ever since.

The Blodgetts brought two earlier actions arising from the unauthorized actions encumbering their land. Zions brought three court proceedings because Betty Purcell and her former attorney Lorin Pace defaulted on their promissory note to Zions. After Lorin Pace paid \$27,262.59 under his default judgment on August 31, 1984, Zions purportedly assigned its judgments against Betty Purcell to Alco. Alco then attempted to foreclose on the Blodgetts' property because of Betty Purcell's prior but extinguished interest in the property. The Blodgetts thus brought this

action, seeking to resolve their property problems once and for all.

The undisputed facts leading to this action are set forth in numbered paragraphs. The facts are documented in court files, judgments, title documents and deeds and other such sources. Because of the length and complexity of the facts, a chronological list of the pertinent events, matters of public record, is set forth in the Addendum. (Ad. 6-9.) This Court may draw all legal conclusions justified by such facts. See e.g., Betenson v. Call Auto and Equip. Sales, 645 P.2d 684, 686 (Utah 1982) ("It is well established that where the issue is solely one of law, . . . this Court is as capable of determining the question as the trial court. . . ").

1. In 1969, the Blodgetts owned two adjacent tracts of land located at approximately 6100 South Highland Drive in Salt Lake County, Utah. The Blodgetts operated a grocery store on the larger tract (the "Store Tract"). They leased the smaller tract (the "Car Wash Tract") to Raco for the installation of a car wash in early 1969. The lease agreement with Raco provided that the Blodgetts would pledge the Car Wash Tract as security for a loan to Raco to finance the car wash installation. Raco, acting through its president Betty Purcell, made arrangements for the loan with Valley Bank and Trust Company ("Valley Bank"). (Record ["R."] 78, 79, 93.)

2. Without the Blodgetts' knowledge and prior to closing the loan, Valley Bank advised Raco that it required additional security in order to make the loan for the installation of the car wash. Raco falsely advised Valley Bank that the Blodgetts had agreed that both their Store Tract and the Car Wash Tract could be used as security for Raco's loan. (R. 79, 93.)

3. Valley Bank prepared a trust deed granting it a security interest in both the Car Wash Tract and the Store Tract. In addition, without first discussing the matter with either Raco or the Blodgetts, Valley Bank prepared a promissory note in its favor for signature by the Blodgetts as co-makers. (Id.)

4. On November 5, 1971, the Blodgetts attended the Raco loan closing at Valley Bank's offices. They intended to execute documents necessary for the hypothecation of the Car Wash Tract alone. The only commitment the Blodgetts had made to anyone concerning the use of any of their real property as security until the moment of closing was the one contained in the Raco lease; Valley Bank had a copy of the lease. (Id.)

5. Although Valley Bank usually explained the terms of loan documents to borrowers unless they demonstrated some degree of sophistication, it offered the Blodgetts no explanation of the contents of the trust deed and, in particular, failed to call attention to the trust deed's departure from a material provision of the Raco lease: that only the Car Wash Tract would be used as security for Raco's loan. (Id.)

6. Valley Bank personnel spent half an hour explaining the documents to Betty Purcell, although neither she nor her corporation was making any contribution to the real property collateral for the loan. Valley Bank personnel made no similar effort to explain the loan documents to the Blodgetts even though the Blodgetts announced that they did not understand them. (R. 80, 93-94.)

7. When the Blodgetts asked about the promissory note, Valley Bank falsely advised them that by executing the loan documents the Blodgetts assumed only a secondary or "stand-by" obligation. The Blodgetts requested copies of all loan documents for review; however, Valley Bank sent them a copy of the promissory note only. (R. 80, 94.)

8. The Raco loan went into default; but Valley Bank did not notify the Blodgetts or suggest to them that the Store Tract was in jeopardy. (Id.)

9. Valley Bank foreclosed on the Store Tract in 1973. To effectuate the foreclosure, Valley Bank utilized Wayne Ashworth ("Ashworth") as trustee. (Id.)

10. Ashworth failed to comply with the procedures prescribed for non-judicial foreclosure of trust deeds in Utah. Ashworth held a public trustee's sale which the Blodgetts attended. By reason of their misconception that only the Car Wash Tract was subject to sale, the Blodgetts failed to take the most elementary steps to protect their interests. For example,



they did not require Ashworth to sell the property in separate tracts or in a particular sequence. Moreover, the Blodgetts did not enter a bid even though the high bid was a small fraction of the property's value. The high bidder at the sale was Joe Martsch, a director of Raco and Betty Purcell's husband at the time. (R. 80, 81, 94.)

11. Neither Ashworth nor Valley Bank consulted with, advised, or sought instruction from the Blodgetts before or during the sale. Both acted purely in Valley Bank's interest and took the course of action most likely to assure that Valley Bank would either be paid in full or acquire the tracts at a bargain price. (Id.)

12. On November 11, 1973, Joe Martsch conveyed a one-half undivided interest in the Store Tract to Water Park Corporation ("Water Park"), a corporation wholly owned by Betty Purcell. (Id.) Lorin Pace witnessed and notarized the conveyance. (Ad. 10.)

13. The Blodgetts first became aware that the Store Tract had been included in the sale when Joe Martsch asserted his rights of ownership after the sale. In 1974 the Blodgetts brought suit to obtain the return of the Store Tract in the Third Judicial District Court, Salt Lake County, Civil No. 223407, against Joe Martsch, Betty Purcell aka Betty Purcell Martsch, Doyle Nease, Raco Car Wash Systems, Inc., a Utah corporation, Wayne A. Ashworth, trustee, Carl W. Tenny, Valley Bank & Trust

Company, and First Security Bank of Idaho, N.A. ("Blodgett I"). The Blodgetts also recorded a lis pendens on November 4, 1974 with the Salt Lake County Recorder in Book 3714, at Page 334, giving notice that they had filed Blodgett I to terminate the interests of all of those defendants in and to the Store Tract. (R. 81, 82, 98, 99.) Lorin Pace represented Raco and Betty Purcell. See Blodgett v. Martsch, 590 P.2d 298, 300 (Utah 1978).

14. The Blodgett I defendants moved for summary judgment. The trial court (per Baldwin, J.) granted the motion, and the Blodgetts appealed. This Court reversed and remanded Blodgett I for trial on December 26, 1978. Blodgett v. Martsch, supra, 590 P.2d at 304.

15. On or about January 16, 1976, while Blodgett I was still pending, Zions filed an action in the Third Judicial District Court, Salt Lake County, against Betty Purcell, a defendant in Blodgett I, and Lorin Pace, seeking judgment for \$27,262.59 on their unpaid promissory note. Zions First National Bank v. Betty Pursell [sic] Alexander and Lorin N. Pace, Civil No. 232782, ("Zions I"). (R. 82.) A copy of the promissory note from Lorin Pace and Betty Pursell to Zions is annexed. (Ad. 12.) Zions alleged, inter alia:

2. On or about the 7th day of July, 1971, at Salt Lake City, Utah, the defendants [Purcell and Lorin Pace], and each of them, made, executed and delivered their promissory note to the plaintiff [Zions], in the amount of \$27,262.59, payable on demand at Salt Lake City, Utah. . . . (R. 9 ¶ 2.)

16. On March 3, 1976, Zions obtained a default judgment in Zions I against Lorin Pace in the amount of \$31,064.52. (Ad. 31.) Fifteen days later, on March 18, 1976, Lorin Pace filed a Motion For Leave To Withdraw As Counsel for Betty Purcell (but not for Raco) in Blodgett I. (Ad. 13.)

17. On August 13, 1976, Zions obtained a default judgment in Zions I against Betty Purcell in the amount of \$31,064.52. (R. 82.)

18. Water Park, to which Joe Martsch had conveyed a one-half undivided interest in the Store Tract in 1973, was administratively dissolved September 30, 1977. An order of the trial court in Zions I (per Durham, J.) concluded that Water Park's assets had become the undivided property of Betty Purcell upon the dissolution of Water Park on September 30, 1977. Thus, according to that order, Betty Purcell was the owner of record of a one-half undivided interest in the Store Tract (conveyed from Joe Martsch to Water Park) as of September 30, 1977. (R. 15; see ¶ 24 below.)

19. In 1978, the Blodgetts brought a second action in the Third Judicial District Court, Salt Lake County, against Betty Purcell and Water Park, seeking to terminate Betty Purcell's and Water Park's interest in the Store Tract. Blodgett v. Betty Purcell aka Betty Purcell Martsch and Water Park Corporation, Civil No. C78-8017, ("Blodgett II"). (R. 15.)

20. On March 13, 1979, Zions brought a second action in the Third Judicial District Court, Salt Lake County, against Betty Purcell for the purpose of enforcing the judgment obtained against her in Zions I. Zions Bank v. Purcell, Civil No. C79-1685, ("Zions II"). (Ad. 14-15.)

21. On April 11, 1979, the trial court (per Durham, J.) consolidated Blodgett I and Blodgett II for trial. (Ad. 16-17.)

22. On May 1, 1979, the trial court in Blodgett I and Blodgett II (per Durham, J.) entered an order on default against Water Park, conveying all right, title and interest of Water Park in and to the Store Tract to the Blodgetts. (R. 83, 100, 101, Ad. 18-21.)

23. On May 2, 1979, the trial court in Zions I (per Durham, J.) set aside Zions' August 13, 1976 default judgment in the amount of \$31,064.52 against Betty Purcell. (R. 83.)

24. On May 16, 1979, Zions obtained an order in Zions II (per Durham, J.) determining that Water Park owned the Store Tract, that Betty Purcell was the sole shareholder of Water Park, that Water Park had been dissolved on September 30, 1977, and that Betty Purcell became the owner of the subject real property on September 30, 1977 by virtue of the dissolution. The order stated further that:

"Any judgment lien [Zions] may have against defendant [Purcell] which is properly docketed in the office of the Salt Lake County Clerk constitutes a lien upon the above-

described property [the Store Tract] as of the date of such docketing if subsequent to September 30, 1977. If any such judgment is docketed prior to September 30, 1977, such judgment shall constitute a lien commencing September 30, 1977. (R. 84.)

Zions had no judgment against Betty Purcell on the date Judge Durham entered this order. The Blodgetts were not parties or participants in Zions I or Zions II. (R. 83, 84.)

25. On or about May 29, 1979, Joe Martsch quitclaimed all interest he had in the Car Wash Tract and in the Store Tract to the Blodgetts, thus conveying to them his one-half undivided interest in the Store Tract and his interest in the Car Wash Tract. (R. 84, 102, see also Ad. 10.)

26. On June 1, 1979, Zions obtained a second default judgment against Betty Purcell in Zions I. The amount of the judgment was \$27,262.59 -- \$3,801.93 less than the amount of the original default judgment Zions had obtained against her. (R. 84.)

27. On December 7, 1979, the trial court in Blodgett I and Blodgett II (per Baldwin, J.) held a pretrial hearing during which the parties settled both cases. The terms of the settlement were read into the record. (R. 84, 85, 103-07.)

28. On December 7, 1979, Judge Baldwin entered an order in Blodgett I and Blodgett II (the "Settlement Order") approving the settlement reached at the pre-trial hearing. A certified copy of the December 7, 1979 Minute Order in Civil No. 223407 is annexed. (Ad. 22.)

29. The terms of settlement approved in the Settlement Order provided for: (1) execution of quitclaim deeds by the defendants in Blodgett I and Blodgett II conveying the Store Tract to the Blodgetts; (2) payment of damages to the Blodgetts; (3) dismissal with prejudice of the Blodgetts' actions; (4) a court order quieting title to the Store Tract in the Blodgetts. (R. 103-07.)

30. On January 15, 1980, Betty Purcell executed a quitclaim deed and delivered it to the Blodgetts pursuant to the terms approved in the Settlement Order. (R. 109-12.)

31. On May 5, 1980, the trial court (per Baldwin, J.) entered an order (the "Dismissal Order") dismissing Betty Purcell as a defendant in Blodgett I and Blodgett II. The Dismissal Order did not include all of the terms of the settlement read into the record at the pre-trial hearing before Judge Baldwin. (R. 85.)

32. In 1984 Zions commenced an action in the Third Judicial District Court, Salt Lake County, to renew its Zions I judgments ("Zions III"). Zions First National Bank v. Lorin N. Pace, No. C84-0299. (See Ad. 11.) After Zions III was filed, Lorin Pace, father of Appellant Stanley Pace, paid Zions \$27,262.59, on August 31, 1984, for amounts due under the judgment against him. (R. 85, 86.) Counsel for Zions confirmed the payment by Lorin Pace in a letter dated August 18, 1986, a copy of which is annexed. (Ad. 11.) The letter substantiates and

explains Zions' averment in its answer in this case that it makes no claim to the subject property. (R. 68.)

33. On or about August 31, 1984, Zions purportedly assigned its judgment of May 16, 1979 in Zions I and its judgment of June 2, 1979 in Zions II to Alco. (See R. 85, 86.) Alco's DBA expired approximately three weeks later on September 22, 1984. (Ad. 4-5.)

34. On April 19, 1985, the Blodgetts received an informal notice to enforce lien from Alco. The notice stated that Alco intended to execute on any judgment lien received by it from Zions. (R. 86.)

35. On May 24, 1985, the Blodgetts brought the instant action ("Blodgett III") against Zions, Stanley Pace, McComb and Alco to quiet title to the Store Tract in the Blodgetts. The Blodgetts also recorded a lis pendens. (Id.)

36. On January 16, 1986 the trial court (per Sawaya, J.) entered an order in Blodgett III granting the Blodgetts' motion for summary judgment. (R. 134-37.) The judgment states:

Therefore, the court hereby orders, adjudges and decrees that:

1. The Motion for Summary Judgment of defendants, Stanley L. Pace and Allen D. McComb dba Alco Investment, is denied.

2. The Motion of plaintiffs as against all defendants, Zions First National Bank, Stanley L. Pace and Allen D. McComb dba Alco Investment, is granted as follows:

a. The judgment liens that arise on behalf of the defendant, Zions First National

Bank, within the civil actions known as Zions Bank vs. Purcell and Pace, Civil No. 232782 [Zions I] and Zions Bank vs. Purcell, Civil No. C79-1685, [Zions II], filed in the Third Judicial District Court of Salt Lake County, State of Utah, which judgment liens and their underlying judgments have been assigned to defendants, Stanley L. Pace and Allen D. McComb, dba Alco Investment, are void and of no effect as against the real property that is the subject of this action, [the Store Tract] identified as [description omitted].

b. Title to the above-identified real property is quieted in the plaintiffs [the Blodgetts] as against any and all right, title, or interest claimed by the defendants, Zions First National Bank and Stanley L. Pace and Allen D. McComb dba Alco Investment.

(R. 135-37.)

37. On August 13, 1986, the trial court in Blodgett I and Blodgett II (per Dee, J.) entered an order (the "Order and Judgment of Quiet Title") granting the Blodgetts' unopposed Motion to Set Aside Order of Dismissal and Enter Judgment of Quiet Title. The Blodgetts filed the motion on March 17, 1986 to correct a clerical error in the Dismissal Order to accord with the settlement that had been read into the record and approved by the trial court (per Baldwin, J.). Even though not required to do so, the Blodgetts personally served Betty Purcell with a copy of the motion. (Ad. 23.) The Order and Judgment of Quiet Title provide:

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:



1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Ernest F. Baldwin, Jr., is hereby set aside.

2. Judgment is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgment applies is located within Salt Lake County, State of Utah, and is more particularly identified as: [description omitted].

This Order shall relate back to and be effective as of May 5, 1980.

The Complaint of plaintiffs against defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc., and Water Park Corporation is hereby dismissed with prejudice and any and all counter-claims of said defendants are hereby dismissed with prejudice with the parties to bear their own costs.

The sum of \$2,400 on deposit with the court in this case be paid over to plaintiffs by the clerk of the court.

A copy of the Order and Judgment of Quiet Title is annexed. (Ad. 23-25.)

CHRONOLOGICAL LIST OF EVENTS

1969	Blodgetts lease Car Wash Tract to Raco and agree to pledge that tract only for loan to finance installation	
07/07/71		Lorin Pace and Purcell make demand note to Zions (\$27,262.59)
11/05/71	Blodgetts close loan with Valley Bank, unknowingly pledge Car Wash Tract <u>and</u> Store Tract, sign note	
	Raco defaults on loan	
1973	Valley Bank via Ashworth, Trustee, forecloses both tracts; Purcell's ex-husband Martsch bids high for both tracts	
10/12/78	Trustee deed issued to Martsch	
	Martsch claims ownership to Blodgetts	
11/08/73	Martsch coveys 1/2 intrest in Store Tract to Purcell's Water Park; Lorin Pace notarizes quit claim deed	
11/04/74	Blodgetts sue Purcell, Martsch and others, file lis pendens ( <u>Blodgett I</u> )	
	Summary judgment against Blodgetts who appeal	
01/16/76		Zions sues Purcell and Lorin Pace for demand note ( <u>Zions I</u> )

<u>Date</u>	<u>Blodgett Transactions and Suits</u>	<u>Zions/Pace/Purcell/Alco Transactions and Suits</u>
03/03/76		Zions takes default against Lorin Pace (\$31,064.52)
08/13/76		Zions takes default against Purcell (\$31,064.52)
09/30/77	Water Park is dissolved; Purcell takes its assets, becomes owner of Store Tract	
1978	Utah Supreme Court orders trial in <u>Blodgett I</u>  Blodgetts sue Water Park and Purcell to terminate their interests in Store Tract ( <u>Blodgett II</u> ) .	
03/13/79		Zions sues Purcell to enforce judgment in <u>Zions I</u> ( <u>Zions II</u> )
04/11/79	<u>Blodgett I</u> and <u>Blodgett II</u> consolidated for trial	
05/01/79	Default order conveys rights of Water Park in Store Tract to Blodgetts	
05/02/79		Default in <u>Zions I</u> against Purcell vacated
05/16/79		Zions obtains order that Water Park was dissolved; Purcell, as sole owner, took its assets to become sole owner of Store Tract on Water Park's dissolution Sept. 30, 1977; Zions may docket lien against Store Tract effective September 30, 1977

<u>Date</u>	<u>Blodgett Transactions and Suits</u>	<u>Zions/Pace/Purcell/Alco Transactions and Suits</u>
05/29/79	Martsch quitclaims 1/2 interest in Store Tract to Blodgetts	
06/01/79		Zions takes second default against Purcell in <u>Zions I</u> (\$27,262.59)
12/07/79	<u>Blodgett I</u> and <u>II</u> settled on record: a) quit claims on Store Tract to Blodgetts; b) damages to Blodgetts; c) quiet title to Blodgetts; d) suits dismissed with prejudice	
01/15/80	Purcell, Raco, Water Park quitclaim interest in Store Tract to Blodgetts	
05/05/80	Dismissal order in <u>Blodgett I</u> and <u>II</u> (corrected 8/13/86 to match terms in record of December 7, 1979) - title quieted to Blodgetts	
1984		Zions renews judgment against Lorin Pace and Purcell ( <u>Zions III</u> )
08/31/84		Lorin Pace pays Zions \$27,262.59 (face amount of note)
08/31/84		Zions assigns judgment to Alco
09/22/84		Alco dba expires and not renewed
04/19/85	Alco notifies Blodgetts of intent to execute judgment against Store Tract	
05/24/85	Blodgetts sue Zions, S. Pace, McComb and Alco ( <u>Blodgett III</u> ); Blodgetts file lis pendens Zions denies interest in Store Tract	

<u>Date</u>	<u>Blodgett Transactions and Suits</u>	<u>Zions/Pace/Purcell/Alco Transactions and Suits</u>
01/16/86	Blodgetts obtain summary judgment against Alco et al.; appeal taken	
08/13/86	Trial court corrects clerical error in judgment, effective May 5, 1980 to quiet title in Blodgetts	

AUG 15 1986. 2:11 P<sup>m</sup> FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

KATIE L. DIXON, Recorder  
Salt Lake County, Utah

AUG 13 11 34 AM '86

S. By Deputy H. DIXON HINDLEY CLERK  
3<sup>rd</sup> DIST. COURT

REF. 4296418

BY *Charles Simon*  
DEPUTY CLERK

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Robert M. Dyer - A0495  
KIRTON, McCONKIE & BUSHNELL  
330 South Third East  
Salt Lake City, Utah 84111  
Telephone: (801) 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY  
STATE OF UTAH

WILLIAM D. BLODGETT and  
FLORENCE G. BLODGETT, his wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,  
aka BETTY PURCELL MARTSCH,

Defendants.

ORDER AND JUDGMENT  
OF QUIET TITLE

Civil No. 223407 and  
C-78-8017 (Consolidated)

Be it remembered that Plaintiffs' Motion To Set Aside Order of Dismissal and Enter Judgment of Quiet Title came for hearing before the Honorable David B. Dee, of the above entitled court on May 2, 1986, at the hour of ten o'clock a.m.

Plaintiff was present by and through it's counsel of record, Mr. Lester A. Perry, of Kirton, McConkie & Bushnell. Defendant, Betty Purcell, aka Betty Purcell Martsch, was not present, either in person or through counsel; said defendant having been previously served with Plaintiffs' Motion and the associated pleadings by personal service on April 1, 1986.

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:

1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Earnest F. Baldwin Jr., is hereby set aside.

2. Judgment is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgement applies is located within Salt Lake County, State of Utah, and is more particularly identified as:

Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°20'50" East along center line of Highland Drive 154.0 feet; thence south 89°15'45" West 197.17 feet; thence South 0°17'45" West 154.0 feet to North line of Vine Street (6100 South); thence North 89°15'45" East along said North line 197.03 feet to the point of beginnning.

Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1, and more particularly described as follows: Beginning at the intersections of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said Engineer's Station 176+92.29 bearing South 38°54'40" East; thence North 116.0 feet to a point on a 2367.0 foot radius

curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.

3. This Order shall relate back to and be effective as of May 5, 1980.

4. The Complaint of plaintiffs against defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc., and Water Park Corporation is hereby dismissed with prejudice and any and all counter-claims of said defendants are hereby dismissed with prejudice with the parties to bear their own costs.

5. The sum of \$2,450 on deposit with the court in this case be paid over to plaintiffs by the clerk of the court.

Dated this 13 day of August, 1986.

STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss

BY THE COURT:

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 13 DAY OF August 19 86

H. DIXON HINDLEY, CLERK

BY Charles D. Dixon DEPUTY

David B. Dee  
David B. Dee, District Judge

ATTEST

H. DIXON HINDLEY

Clerk

By

Charles D. Dixon  
Deputy Clerk