

1976

Jacobson v. Jacobson : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

OF THE STATE OF UTAH

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CLYDE A. JACOBSON and
REGINA J. JACOBSON,

Plaintiffs-
Appellants,

-VS-

CLYDE E. JACOBSON and
ERMA B. JACOBSON,

Defendants-
Respondents.

Case No. 39,647

BRIEF OF APPELLANT

Appeal from a Judgment quieting title to
real property in Defendants by the Fourth Judicial
District Court for Utah County, State of Utah,
Honorable George E. Bailiff presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

CLYDE A. JACOBSON and	:	
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Plaintiffs-	:	
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	:	
Defendants-	:	
Respondents.	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

This action was initiated in 1974 for the purpose of canceling a void deed constituting a cloud on title to real property.

DISPOSITION IN THE LOWER COURT

The dispute was tried before the Honorable George E. Ballif, in the Fourth Judicial District Court of Utah County, sitting without a jury. The court made findings of fact and conclusions of law and entered judgment for Respondents, the defendants below. The court found that the deed to the disputed property vested full legal title

in the Respondents, free and clear of any and all claims in favor of the Appellants.

RELIEF SOUGHT ON APPEAL

Appellants seek to have the judgment of the trial court overruled. Appellants ask this Court to declare that full legal title to the disputed property is vested in them and to enter judgment in their favor.

STATEMENT OF FACTS

On August 28, 1962, Appellants Clyde E. Jacobson and Regina Jacobson purchased the property in dispute, approximately twelve acres of land located in Utah County. Sellers were Norval and Alice Carter, and the sale was made under a Uniform Real Estate Contract, (Tr. 11, Exhibit P-3) at a purchase price of \$14,538.10. Appellants made an initial downpayment of \$809.91. (Tr. 11). After repairing the house on that property to make it habitable, Jacobson and his family occupied the premises.

Appellants made monthly payments of \$100.00 under the terms of the contract until early 1965 at which time their payments for the property became delinquent (Tr. 99). The seller instituted foreclosure proceedings in May of 1965. Pursuant to an order issued by the court Appellants were allowed until June 8, 1965 to pay off the

balance of their indebtedness to the sellers or a judgment of foreclosure would issue. (Tr. 16).

In order to obtain enough money to pay the balance owing, Jacobson approached one Earl Stubbs of Provo, Utah. Stubbs agreed to lend him the sum of \$10,000.00 but was unable to advance the entire amount due, \$14,538.10 (Tr. 18). The remainder was raised by the Appellant's father, Respondent Clyde E. Jacobson, (hereinafter referred to as Jacobson senior).

On June 8, 1965, the last day that payment could be made, Stubbs and both Jacobsons met in the office of the seller's attorney, Heber Grant Ivans. They made an agreement whereby Stubbs advanced \$10,000.00 for payment of the obligation to the seller and Jacobson senior advanced \$4,538.10. (Tr. 101, Exhibit P-5).

Stubbs was concerned about securing his loan to Jacobson. The parties did not wish to have title to the property remain in Jacobson's name, however, since it would become subject to a prior judgment. It was agreed that the loan could not be secured by mortgaging the property (Tr. 104).

As an alternative to a formal mortgage, the Appellant executed an "Open Warranty Deed" to Stubbs as security for his loan. A warranty deed signed by Jacobson with the names of grantees and grantors left

blank was sent to Stubbs by Ivans who handled the transaction (Tr. 105, Exhibit P-8). The blank deed given to Stubbs was intended and understood by the parties to create a security interest and not to accomplish a conveyance of the property.

It is questionable whether Regina Jacobson signed the deed at the time it was delivered to Stubbs. She admits signing it eventually, but maintains that she did so unknowingly. (Tr. 81). The property description was very likely absent from the deed at this time also. (Tr. 22, 107). Jacobson never saw the deed again unless when signed by his wife.

The warranty deed that was sent to Stubbs is the deed under which Respondents claim legal title to the disputed property.

Approximately a year after he signed the "open deed" the Appellant learned that his father had paid off the balance of his debt to Stubbs. (Tr. 38). The blank deed as well as the warranty deed to Jacobson from the seller were recorded on July 18, 1966. Respondents names were filled in as grantees in the blank deed. (Exhibits P-8, P-6). The original of the record was to be sent to Jacobson senior. Neither Appellants knew who recorded the deed nor did they authorize the recording. (Tr. 38, 84).

Appellants continued to occupy the disputed property throughout these events, leaving and returning at will. Jacobson left twice due to marital problems and Regina left once when a divorce was contemplated. Jacobson's sister and her husband lived there during that brief period (Tr. 50).

At no time after its purchase did Appellants transfer the property to anyone or intend a conveyance by any transaction.

POINT I.

WHERE THE PROCEEDING TO BE REVIEWED
IS IN EQUITY IT IS THE DUTY AND
PREROGATIVE OF THE SUPREME COURT
TO REVIEW BOTH LAW AND FACTS AND
TO CONSIDER THE WEIGHT OF THE
EVIDENCE

Since the present action is in equity, this Court has the authority and the responsibility to review the trial court's findings of fact as well as its conclusions of law. In Richins v. Struhs, 17 Utah 2d. 356, 412 P.2d 314, 315 (1966), an action to enforce an easement by proscription it was noted that:

" * * * this attempt to assert and establish an interest in land, the legal title to which is vested in another is a proceeding in equity. It is the duty and prerogative of this court to review both the law and the facts, and to consider the weight and sufficiency of the evidence."

The standard of review of an action in equity is more advantageous to an appellant than in other cases. The Supreme Court is entitled to make its own findings and substitute its judgment for that of the trial court. Mitchell v. Mitchell, 527 P.2d 1359 (Utah 1974).

In Pogano v. Walker, 539 P.2d 452, 454 (Utah 1975), an action to impose a trust on a joint bank account, this Court pointed out that even in equity cases a trial court's findings are viewed "with considerable indulgence". But they will be overruled if the evidence "clearly preponderates against them".

In this action Appellants contest the trial court's findings of fact as well as conclusions of law based upon them. If the weight of the evidence is against the trial court's judgment they are entitled to have it overruled.

POINT II.

APPELLANTS ESTABLISHED WITH CLEAR AND CONVINCING PROOF THAT THE DEED THEY SIGNED DID NOT ACT AS A PROPERTY CONVEYANCE

- A. UNCONTROVERTED EVIDENCE PROVED THAT THE APPELLANTS DID NOT INTEND THE DEED TO BE A CONVEYANCE AND THAT THE GRANTEEES WERE LEFT BLANK WHEN DELIVERED.

It was the undisputed testimony of both Appellants and the attorney who arranged the transaction that the deed by which Respondents assert ownership was intended to operate as a security interest only and not a property conveyance.

It is undisputed that the Appellants purchased the property in question in 1962 and that the only deed which Jacobson signed subsequent to his purchase was executed in Grant Ivans' office on June 8, 1965. It was Jacobson's testimony that the deed he signed contained no property description and that spaces for the names of grantors and grantees were left blank. The deed was sent to Earl Stubbs as security for a loan of \$10,000.00 according to Jacobson's testimony, and was not intended as a conveyance of his property.

"Q. (By Mr. Randle) Did you intend to sell your property to Mr. Stubbs?

A. No.

Q. Were you to pay him back?

A. Yes." (Tr. 27-28).

Regina Jacobson's signature also appears on the deed under which Respondents claim their interest in the property. It was her testimony that, although her

signature appears on the document, she signed it without knowing what it was, and never intended to convey her interest.

"Q. When you signed that document, did you know it was a warranty deed?

A. No, I did not.

Q. Have you ever entered into a transaction where you intended to transfer that property to anyone?

A. Never." (Tr. 82).

In addition to the Appellants themselves, Heber Grant Ivans, the attorney who arranged the transaction appeared on their behalf. Ivans testified that the loan made by Stubbs to Jacobson was not secured by a formal mortgage because an outstanding judgment made it unwise to leave title in Jacobson himself. (Tr. 107). It was Ivans who mailed the warranty deed to Stubbs which left the grantors and grantees blank. (Tr. 107). It was his understanding and his testimony that the deed was a security and was not intended as a property conveyance.

"Q. Now, was the form of the transaction you structured, the form of a loan, and is that what the intention was to be, or was it a conveyance? I mean, is the basic structure other than the documents themselves, which of

course purport to be a conveyance, was it meant to be a conveyance? Or was it meant to be a loan and a security agreement?

A. Well, all I would say is that it was my recollection that Mr. Stubbs had loaned this money to assist Clyde A. Jacobson and his wife because he felt sorry for the boy and his wife. (Tr. 111).

* * *

A. * * * In my opinion, the deeding transaction, as far as Mr. Stubbs was concerned, was for security purposes." (Tr. 113).

During his testimony Ivans identified letters sent from him to the sellers and to Stubbs along with copies of the deed. In the letter to Mr. and Mrs. Carter, the sellers, he states:

"I am enclosing a Warranty Deed with the Grantee left blank . . ." (Exhibit P-19).

In his letter to Stubbs, Ivans notes that:

" I am also enclosing a Warranty Deed signed by the Jacobsons made in blank. . ." (Exhibit P-20).

The Respondent introduced no evidence whatsoever which contradicted Appellant's proof that the warranty deed was not intended as a property conveyance and did not name the grantors and grantees when delivered.

Jacobson did admit on direct examination that in 1969 he filed bankruptcy in Federal Court where he testified that he had no ownership interest in the disputed property. (Tr. 46). He admitted that his testimony in that action contradicted his assertions in the present action and said that he had given false testimony in order to protect his land. (Tr. 62). Respondents offered the "Discharge of Bankrupt" in evidence. (Exhibit D-9).

Regina Jacobson acknowledged on direct examination that she had filed for divorce against her husband in 1973 and that the land in question is not listed among her holdings in pleadings filed. She testified, however, that the omission was an oversight of her counsel and that she had consistently requested to him that she did have such an interest. Her attorney appeared and testified that she had asserted her interest in the property to him. (Tr. 122). The file in Mrs. Jacobson's divorce action was introduced by the Respondents. (Exhibit D-12).

Although this evidence might suggest that on a particular occasion both Appellants disclaimed ownership in the disputed property, when viewed in relation to their circumstances no such inference is justified by those statements.

More importantly, these facts do not affect or alter in anyway the Appellants uncontroverted proof that the deed which they signed was not intended by them as a property conveyance and was not filled in when delivered. Nor did Respondents' introduction of evidence that the deed was eventually recorded in the Respondents' names and that title insurance was issued to them address the crucial issues of fact.

B. AS A MATTER OF LAW A DEED WHICH WAS
NOT INTENDED AS A PROPERTY CONVEYANCE
AND DID NOT CONTAIN THE NAMES OF THE
GRANTEE IS NOT A CONVEYANCE.

From time immemorial, the common law has been that a transfer of property cannot take place unless the grantors intend it. As this Court stated in Givan v. Lambeth, 10 Utah 2d. 287, 351 P.2d 959, 961 (1960), no conveyance takes place until there is "an actual delivery with intent to transfer ownership."

Often an instrument which purports to be a conveyance is intended to be the delivery of a security interest and not a property transfer. Where that is the case, the parties are allowed to prove their real intention and the courts will construe the instrument accordingly.

In Bybee v. Stewart, 112 Utah 462, 189 P.2d 118 (1948), the parties to a warranty deed executed a

contemporaneous agreement which established that the deed was intended as security only. The Supreme Court held that where a written agreement shows an intention to create a security interest and not a conveyance the transaction will be treated as a mortgage.

However, proof of the parties' intention in drafting a warranty deed need not be in writing. In Kesler v. Rogers, 542 P.2d 354 (Utah 1975), an action brought by a purchaser of property to contest ownership of a particular tract, this Court reaffirmed its consistent holding to that effect. Referring to the Parole Evidence Rule it was noted that:

"In more specific application here, when the conveyance (or part of it) was made only for the purpose of security rather than as an outright conveyance, that fact may be shown."

The instrument mailed to Stubbs had no legal effect as a conveyance, not only because the parties never intended that the property be sold but because the names of the grantees were omitted from it. In Burnham v. Eschler, 116 Utah 61, 208 P.2d 96, 97 (1949) a quiet title action, the Court explained that:

"A paper purporting to be a deed, but which is blank as to the grantee is no deed and is ineffective as a conveyance while the blank remains.

. . . Also, if the name of the grantee is inserted by a party who never legally obtained possession of the instrument nor obtained authority from the grantor to complete the instrument, no deed comes into existence."

The grantors did not intend the deed by which Respondents claim their interest to be a conveyance. When mailed, the space for the names of the grantees was left blank. The grantors at no time authorized the completion of the deed with Respondents names inserted as grantees. As a matter of law, that instrument could not transfer the disputed property from Appellants to Stubbs.

Since Stubbs received only a security interest he could not convey a property interest to the Respondents. Regardless of the belief under which Jacobson senior may have acted in paying the balance which Appellant owed Stubbs he received no interest in the disputed property because the only deed ever signed by its owner as a matter of law was not a conveyance.

POINT III.

THE TRIAL COURT ERRED IN HOLDING THAT BECAUSE NO EVIDENCE OF THE FORMAL REQUISITES OF A MORTGAGE WAS INTRODUCED THE DEED MUST BE TREATED AS A CONVEYANCE

The trial court held that inasmuch as no evidence of interest rate, terms of repayment and other requirements of an enforceable mortgage was introduced, the deed could not be treated as a mortgage. The trial court misconstrued the law which looks to the intention of the parties and not the requisites of a formal mortgage to determine how a warranty deed should be construed.

In Bybee, supra 189 P.2d at 122, the Court pointed out that, to be treated as a mortgage:

"No particular form is necessary so long as the intention of the parties is shown * * * * * a deed absolute on its face may be shown by parole evidence to have been given for security purposes only and when such a showing has been made, equity will give effect to the intention of the parties. Such security transactions, lacking the requisites of a formal mortgage are termed equitable mortgages."

It has never been suggested by this Court that the rate of interest and terms of repayment must be

established in order to treat a warranty deed as a mortgage. In the recent Kesler case, supra, for example, such evidence was lacking. The Court treated the deed as a mortgage simply because parole evidence established that it was intended as a security agreement. No other showing has ever been required.

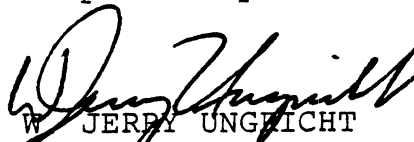
It should be noted that in this instance Appellants offered proof of the terms of the security arrangement with Stubbs through the testimony of Jacobson himself. That evidence was excluded by the trial court as hearsay, over counsel's objection that the terms of a contract are verbal acts and not hearsay. (Tr. 26). Stubbs was unable to testify himself due to illness. Appellants specifically claim this exclusion of evidence as error by the trial court.

CONCLUSION

The only deed to the disputed property signed by its owners, Appellants Clyde E. and Regina Jacobson, was a blank deed intended as security for a loan. As a matter of law, this deed did not act as a conveyance of their property to Earl Stubbs. Stubbs in turn was incapable of conveying their property to Respondents who claim title under that deed. Appellants never conveyed their interest in the disputed property to

Respondents or to anyone else. For these reasons,
Appellants ask this Court to declare that full legal
title to the disputed property is vested in them.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify that two true and exact
copies of the foregoing Brief of Appellants were mailed
to Gary D. Stott, 84 East 100 South, Provo, Utah 84601,
this the 14th day of June, 1976.

Beverly A. Brown