

2000

Grand County v. Lester W. Rogers : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Grand County v. Rogers*, No. 20000672.00 (Utah Supreme Court, 2000).
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IN THE SUPREME COURT OF THE STATE OF UTAH

GRAND COUNTY,)	
)	Case No. 20000672-SC
Plaintiff / Respondent,)	
)	ct. of appeals no. 990766-CA
v.)	
)	
LESTER W. ROGERS,)	
)	
Defendant / Petitioner.)	Priority No. 13

REPLY BRIEF OF PETITIONER

On Certiorari to the Utah Court of Appeals

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FILED

MAY 07 2001

**CLERK SUPREME COURT
UTAH**

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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ARGUMENTS

I. THE COURT OF APPEALS FAILED TO CONSIDER THE GENUINE ISSUES OF MATERIAL FACT THAT EXIST CONCERNING WHETHER GRAND COUNTY IS ESTOPPED FROM ENFORCING ITS SUBDIVISION ORDINANCE.

Grand County, in its Brief of Appellee, argues that Mr. Rogers "presented no genuine issues of material facts which would preclude summary judgment." See Brief of Appellee, p. 5. The record on appeal, as specifically set forth below, indicates otherwise. In the course of rendering its unpublished decision, the court of appeals not only failed to consider various genuine issues of material fact but it failed to view the facts and all reasonable inferences drawn therefrom in a light most favorable to Mr. Rogers, who was the nonmoving party.

The Grand County Recorder, in the instant case, accepted and recorded each document utilized to memorialize the sale and conveyance of properties by Mr. Rogers to various third parties (See R. 36-39, Affidavit of Lester Rogers, ¶9).¹ Grand County acknowledges accepting and recording the previously mentioned documents (See R. 15-17, Affidavit of Mary Hofhine in Support of Plaintiff's Motion for Summary Judgment, ¶¶2-4). By accepting and recording the various instruments, Grand County performed acts

¹See R. 18-21.

that are inconsistent with its subsequent enforcement of the subdivision ordinance.

In its Brief, Grand County asserts that the mere recordation of instruments by the County Recorder does not constitute estoppel or waiver. See Brief of Appellee, p. 6-7. The record, however, reveals that this is not a mere recordation case. Not only did the County Recorder accept and duly record each of the instruments but it reported and transmitted the conveyances to other County agencies, which is consistent with the Recorder's statutory duty to report changes in ownership where only a part of the property is conveyed and then transmit a legal description of the portion of the property retained. See Utah Code Ann. § 17-21-22 (1995). Presumably, the Grand County Recorder reported and transmitted the change-in-ownership and partial-conveyance information to other agencies when Mr. Rogers sold and conveyed the parcels of property to the various third-party property owners.

In the course of addressing the recordation issue, the court of appeals, in its unpublished decision, concluded that "[t]he recording of the relevant instruments is for notice purposes and is unrelated to the County's enforcement of zoning ordinances" See *Grand County v. Rogers*, 2000 UT App 162, pp. 1-2. Nowhere in its decision did the court of appeals' discuss or analyze the aforementioned statutory duty of the County Recorder

to index deeds and other instruments "partitioning or affecting the title to or possession of real property" as well as the grantors and grantees of such as set forth in Utah Code Ann. § 17-21-6(1)(b) & (c) (1995). Moreover, the court of appeals failed to consider that the County Recorder, as previously discussed, is required by Utah Code Ann. § 17-21-22 (1995) to report changes in ownership "where only a part of the grantor's property is currently conveyed" and then "transmit an additional form showing a full legal description of the portion retained."

In addition to the acceptance and recording of instruments, each of the parties to whom Mr. Rogers sold and conveyed the subject properties possessed and made extensive valuable improvements to their individual parcels of property (See R. 36-39, Affidavit of Lester Rogers, ¶10). In fact, each of the third parties obtained a building permit for their improvements, which means that an official from the County, in each instance, personally inspected either the actual parcel of property or the building plans of the respective individual third-party property owner prior to issuing each building permit. At oral argument before the court of appeals, Grand County essentially acknowledged that it issued building permits to the buyers of Mr. Rogers' property over the course of several years. Grand County does not refute this in its Brief before this Court.

The application of equitable estoppel to the instant case is particularly appropriate inasmuch as Grand County waited over five years after the sale of the first parcel of property by Mr. Rogers to Ms. Betty L. Relitz and almost a year and a half after the last sale to file a Complaint, alleging that Mr. Rogers had failed to properly subdivide the subject property prior to selling the same to third parties (See R. 1-4, Complaint). Moreover, application of estoppel is especially appropriate in the instant case inasmuch as this is *not* a case where the party claiming estoppel acted fraudulently, in bad faith, or with knowledge. See *Utah County v. Young*, 615 P.2d 1265, 1267 (Utah 1980); *Xanthos v. Board of Adjustment of Salt Lake City*, 685 P.2d 1032, 1038 (Utah 1984).

In the course of rendering its decision, the court of appeals also failed to view the facts and all reasonable inferences to be drawn therefrom in a light most favorable to Mr. Rogers as the nonmoving party. See *Trethway v. Miracle Mortgage, Inc.*, 2000 UT 12, ¶2, 995 P.2d 599; *Higgins v. Salt Lake County*, 855 P.2d 231, 233 (Utah 1993); see also *Estate Landscape & Snow Removal Specialists, Inc. v. Mountain States Tel. & Tel. Co.*, 844 P.2d 322, 324 n.1 (Utah 1992) (clarifying that reviewing court should view facts in light most favorable to nonmoving party, not losing party). At the very least, a determination of whether estoppel applies to the facts of the instant case requires the fact finder

to consider testimony and therefore make credibility determinations about such testimony as it pertains to the elements of estoppel. See generally *Singleton v. Alexander*, 19 Utah 2d 292, 294, 431 P.2d 126, 128 (1967); *Sandberg v. Klein*, 576 P.2d 1291, 1292 (Utah 1978) (stating that even in cases where facts are not in "complete conflict" but the "understanding, intention, and consequences" of the facts are disputed, the matters "can only be resolved by a trial"). That there exist triable issues is further supported by Grand County's contention in its Brief that "general law provides that waivers of subdivision controls are not to be inferred unless the conduct said to constitute a waiver was clearly intended as such." See Brief of Appellee, p. 7. As recognized by this Court, the actions or events allegedly supporting waiver are "intensely fact dependent" and require the fact finder to assess "the totality of the circumstances" before making such a determination. *Soter's v. Deseret Federal Sav. & Loan Ass'n*, 857 P.2d 935, 940-41 (Utah 1993); accord *Pledger v. Gillespie*, 1999 UT 54, ¶16, 982 P.2d 572.

Nowhere in its unpublished decision did the court of appeals consider the disputed material facts that the subject parcels of property had been extensively improved or that Grand County had substantially delayed its enforcement of the subdivision ordinance. The court of appeals' legal conclusion that Grand

County was not estopped is in direct conflict with this Court's decision in *Utah County v. Young*, 615 P.2d 1265 (Utah 1980), where this Court stated that the doctrine of equitable estoppel applies "when a county committed an act or omission upon which the developer could rely in good faith in making substantial changes in position or incurring extensive expenses." *Id.* at 1267 (citing *Pasco County v. Tampa Dev. Corp.*, 364 S.2d 850 (Fla. Ct. App. 1978)). Further, the court of appeals failed to consider that the disputed material facts in the instant case constitute more than mere "[s]ilence or inaction." *Young*, 615 P.2d at 1268. The material facts of the instant case, when properly considered, constitute the exceptional circumstances contemplated for the application of estoppel against Grand County.

II. THE COURT OF APPEALS ERRED BY FAILING TO CONSIDER THE ABSENT PROPERTY OWNERS OF THE SUBJECT PARCELS OF PROPERTY TO BE NECESSARY PARTIES TO BE JOINED PRIOR TO A FULL AND FAIR DETERMINATION OF THE INSTANT CASE.

Without any supporting citation, Grand County baldly asserts that the lot owners of the subject property are not indispensable parties.² See Brief of Appellee, p. 8. For the reasons detailed

²Grand County asserts that the absent third parties "cannot get building permits under current conditions . . . , and they cannot have the benefits of subdivision improvements, which may be required" See Brief of Appellee, p. 8. As previously discussed, the third-party property owners have already obtained building permits and have already made substantial and valuable

in the previously filed Brief of Petitioner as well as that below, the court of appeals misinterpreted Rule 19, of the Utah Rules of Civil Procedure, and erroneously concluded that the third-party buyers are not necessary parties.

The court of appeals failed to consider Mr. Rogers' arguments that according to Rule 19(a)(1), the property owners to whom Mr. Rogers sold various parcels of the subject property are necessary parties to the litigation because in their absence complete relief cannot be accorded among those already parties. *Cf. Stone v. Salt Lake City*, 11 Utah 2d 196, 356 P.2d 631, 637 (1960) (holding "grantees of deeds, the validity of which is under attack" to be necessary parties). From 1994 through 1997, Mr. Rogers sold and conveyed various parcels of the subject property to bona fide third parties (See R. 15-17, Affidavit of Mary Hofhine in Support of Plaintiff's Motion for Summary Judgment, ¶¶2-5; R. 36-39; Affidavit of Lester Rogers, ¶¶8-10). In light of the claims asserted by Grand County and, more importantly, by virtue of the district court's judgment that requires Mr. Rogers to obtain subdivision approval for property that is owned by third-party owners, the interests of the third-party property owners, who are

improvements to their individual parcels of property pursuant to building permits previously issued by Grand County (See R. 38, Affidavit of Lester Rogers, ¶10). That subdivision improvements may be required of the absent third-party owners supports joinder pursuant to Rule 19.

not parties to this action, are directly adverse to the interests asserted by Grand County (See R. 63-66, Judgment (Enjoining Violation of Subdivision Ordinance)). In fact, the district court's judgment essentially voids the previous sales and conveyances by Mr. Rogers of the various parcels of the subject property to bona fide third parties (See *id.*). The fact that the third-party property owners are necessary is further demonstrated by both Grand County's Complaint and its Motion for Summary Judgment in which it asserted that Mr. Rogers' sales and conveyances of the subject parcels of property are void (See R. 3, Complaint, ¶2 of the Prayer; R. 27-28, Amended Memorandum of Points and Authorities in Support of Motion for Summary Judgment; R. 41, Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment).

In addition, the absent property owners are necessary parties under Rule 19(a)(2) inasmuch as they have an interest relating to the subject property and are so situated that the disposition of the action in their absence may impair or impede their ability to protect that interest.³ See Utah R. Civ. P. 19(a)(2); see also *Bonneville Tower Condominium Management Comm. v. Thompson Michie*

³Grand County admitted that the absent third-party property owners have an interest in the subject real property (See R. 15-17, Affidavit of Mary Hofhine in Support of Plaintiff's Motion for Summary Judgment, ¶¶2-5; see also R. 36-39, Affidavit of Lester Rogers, ¶¶8-10).

Assocs., Inc., 728 P.2d 1017, 1019 (Utah 1986) ("A plaintiff may not obtain relief adverse to the property rights of others who are not adverse parties to the case without bringing them before the court."). The district court's judgment is a judgment lien upon the subject real property, and thus encumbers the interests of the absent third-party property owners for purposes of enforcing the various subdivision ordinance requirements. See Utah Code Ann. § 78-22-1 (Supp. 1999). Enforcement of the subdivision requirements, by virtue of the judgment, are presumably enforceable also upon the third-party property owners without any response or opposition by them to the enforcement.

The court of appeals all but failed to consider that the district court's present disposition may subject Mr. Rogers to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations in order to comply with the district court's ruling as it is presently fashioned. See Utah R. Civ. P. 19(a)(2). Even if Mr. Rogers could legally comply with the district court's order, such compliance would subject Mr. Rogers to multiple obligations that would likely be incurred by actions filed by the absent third-party property owners against Mr. Rogers

to defend their interests or otherwise shift responsibility for assessments incurred by the subdivision ordinance requirements.⁴

With little or no consideration of the joinder issue, the court of appeals affirmed the summary judgment in which the district court ordered Mr. Rogers to apply and obtain subdivision approval for the parcels of property already sold to third parties not before the court (See R. 64, Judgment (Enjoining Violation of Subdivision Ordinance)). The district court ordered Mr. Rogers' compliance notwithstanding that he does not have the legal capacity or right to bring the previously sold and conveyed parcels of property into compliance with the applicable zoning and subdivision ordinances because ownership of the parcels, whether deemed legal or equitable, now lies with absent third parties.

Not only did the court of appeals fail to consider the two general factors in Utah R. Civ. P. 19(a),⁵ it also ignored this Court's decision in *Bonneville Tower*, holding that the "failure to bring all parties before the court prevents it from properly reaching the merits of plaintiff's claim." *Bonneville Tower*, 728 P.2d at 1020. Finally, the court of appeals' decision conflicts

⁴Grand County acknowledges in its Brief that the absent third-party property owners "may have claims against Mr. Rogers" See Brief of Appellee, p. 9.

⁵See *Landes v. Capital City Bank*, 795 P.2d 1127, 1130 (Utah 1990).

with *Stone v. Salt Lake City*, 11 Utah 2d 196, 356 P.2d 631 (1960), where this Court held that "grantees of deeds, the validity of which is under attack", are necessary parties. *Stone*, 356 P.2d at 637.

III. THE COURT OF APPEALS MISINTERPRETED THE OCCUPYING CLAIMANTS ACT AND FAILED TO CONSIDER WHETHER GENUINE ISSUES OF MATERIAL FACT OR ISSUES OF LAW EXIST IN LIGHT OF THE ACT.

Without any analysis or authority, Grand County argues that the court of appeals correctly held that the Occupying Claimants Act does not apply to the instant case. See Brief of Appellee, p. 9. For the reasons detailed below, the court of appeals misinterpreted the Occupying Claimants Act, Utah Code Ann. § 57-6-1, et seq. (1994 & Supp. 2000), in the course of concluding that the Act does not apply in this case.

In the course of interpreting a statute, this Court's "primary goal is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." *Evans v. State*, 963 P.2d 177, 184 (Utah 1998). The best evidence of the legislature's true intent and purpose in enacting a statute is the plain language of the statute. See *State v. Hunt*, 906 P.2d 311, 312 (Utah 1995).

Section 57-6-1 of the Act provides:

Where an occupant of real estate has color of title to the real estate, and in good faith has made valuable improvements on the real estate, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the owner in possession of the real estate after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

Utah Code Ann. § 57-6-1 (Supp. 2000). Further, section 57-6-4(2)(a) provides that

Any person has color of title who has occupied a tract of real estate by himself [or herself], or by those under whom he [or she] claims, for the term of five years, or who has occupied it for less time, if he [of she], or those under whom he [of she] claims, have at any time during the occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements on the real estate, or if he [or she] or those under whom he [or she] claims have at any time during the occupancy paid the ordinary county taxes on the real estate for any one year, and two years have elapsed without a repayment by the owner, and the occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained.

Utah Code Ann. § 57-6-4(2)(a) (Supp. 2000) (Bracketed material added). The record demonstrates that the absent third-party property owners to whom Mr. Rogers sold the subject parcels of property have occupied the subject real property and have made valuable improvements to their respective parcels (See R. 36-39, Affidavit of Lester Rogers, ¶¶6, 8, and 10). At oral argument

before the court of appeals, Grand County acknowledged the improvements to the subject property in the course of discussing building permits that had been issued to the property owners.

Contrary to the plain language of the statute, the court of appeals held that the Occupying Claimants Act does not apply to the instant case. See *Grand County v. Rogers*, 2000 UT App 162, pp. 2-3. In the course of interpreting the Act, the court of appeals stated, "The remedy sought by the County seeks neither to expel them nor to encumber their property in any way." See *id.*

Contrary to the court of appeals' conclusion, the district court's judgment, at the very least, constructively voids the previous sales and conveyances by Mr. Rogers of the various parcels of the subject property to bona fide third parties. This is consistent with both Grand County's Complaint and its Motion for Summary Judgment in which it asserted that Mr. Rogers' sales and conveyances of the subject parcels of property are void (See R. 3, Complaint, ¶2 of the Prayer; R. 27-28, Amended Memorandum of Points and Authorities in Support of Motion for Summary Judgment; R. 41, Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment). Moreover, the district court's judgment acts as a judgment lien upon the subject real property, and thus encumbers the interests of all the absent third-party property

owners for purposes of enforcing the various subdivision ordinance requirements. See Utah Code Ann. § 78-22-1 (Supp. 1999).

In the course of its interpretation, the court of appeals failed to consider both the plain language of the Act and the genuine issues of disputed material facts under which the absent third-party property owners and Mr. Rogers occupy the subject property and thereby have color of title as against Grand County. See Utah Code Ann. § 57-6-4 (Supp. 2000). Finally, in light of the interests of the occupying claimants in this case, material issues exist concerning the remedies that the property owners are entitled to in light of the competing interests asserted by Grand County in this action and whether the zoning and subdivision ordinances of the County take precedence over the interests provided for in Utah Code Ann. § 57-6-1, *et seq.* (1994 & Supp. 2000). See Utah Code Ann. § 57-6-3 (1994) (providing remedy for parties to hold property as tenants in common).

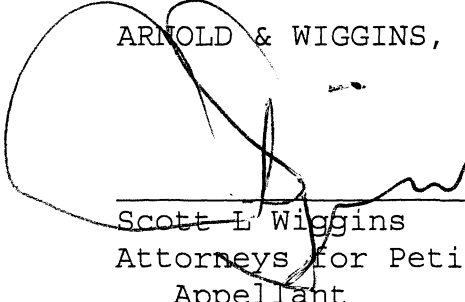
CONCLUSION

Based on the foregoing, as well as that previously submitted in the Brief of Petitioner, Mr. Rogers respectfully asks that this Court reverse the court of appeals' unpublished decision in which it affirmed the district court's grant of summary judgment in favor of Grand County and remand the case for trial on the

existing genuine issues of disputed material fact and issues of law and for any other relief the Court deems appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 7th day of May, 2001.

ARNOLD & WIGGINS, P.C.

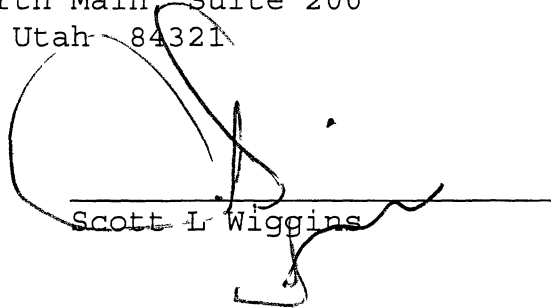


Scott L. Wiggins
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Appellant

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **REPLY BRIEF OF PETITIONER** to the following on the 7th day of May, 2001:

Mr. W. Scott Barrett
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108 North Main, Suite 200
Logan, Utah 84321



Scott L Wiggins

ADDENDUM

No Addendum is necessary pursuant to Utah Rule of Appellate Procedure 24(a)(11).