

1977

Carna L. Peterson v. David H. Carter and Janet S. Carter et al : Brief of Plaintiffs-Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

CARNA L. PETERSON, by LARRY :
BROADHEAD, guardian, :
 :
Plaintiffs-Appellants, :
 :
vs. :
 :
DAVID H. CARTER and JANET :
S. CARTER, : Case No. 15,310
 :
Defendants-Respondents, :
 :
STATE OF UTAH, by and through :
UTAH STATE DEPARTMENT OF :
SOCIAL SERVICE, :
 :
Intervenor. :

BRIEF OF PLAINTIFFS-APPELLANTS

APPEAL FROM JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT, STATE OF UTAH
JUDGE J. ROBERT BULLOCK

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STATUTES AND RULES CITED

Utah Constitution, Article VIII, §9

Utah Rules of Civil Procedure, Rule 72(a)

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BRIEF OF PLAINTIFFS-APPELLANTS

NATURE OF THE CASE

This is a suit in equity to vacate a deed brought by the guardian of Carna Peterson, an incompetent person, on the basis of said person's incompetency and on the basis of undue influence exercised over her by the defendants-respondents (hereinafter referred to as respondents).

DISPOSITION IN THE LOWER COURT

The trial court held a trial on the merits and found that Carna Peterson knew and understood the nature of the transaction, the lien position of the State of Utah, and the consequential limitation on the benefits to be derived by her for the sale of the property, and that respondents did not exercise any undue influence, fraud or duress over Carna

Peterson when acquiring the subject property.

RELIEF SOUGHT ON APPEAL

Appellants seek to have this Court make a complete review of the facts as revealed by the record and to reverse the trial court's findings, and to have the case remanded to the lower court for trial on the issues of the right of the respondents to receive reimbursement for improvements done on the property.

STATEMENT OF FACTS

By warranty deed dated September 2, 1975, (Ex. 3), Carna Peterson conveyed her home and underlying real property of approximately 1 acre located in Juab County, State of Utah, to the respondents for the sum of \$3,200.00. Prior to this time, by an instrument entitled "Bill of Sale" dated the 29th day of August, 1972, (Ex. 2), the respondents tried to purchase the same home and property for the same price, but were frustrated in their attempts to do so.

At the time of the execution of the warranty deed, Carna Peterson was 91 years of age and was residing in a rest home since she was unable to care for herself. Prior to this time, the State of Utah had recorded a welfare lien against the property in excess of \$28,000.00, (Ex. 8), which was released by an instrument dated the 8th of September, 1975. (Ex. 6).

Sometime around September 8, 1975, the attorney for the respondents, Milton Harmon, received a phone call from LeRay Jackson, the attorney for Mrs. Peterson's family, objecting

to the transaction, and questioning Mrs. Peterson's competency. (R. 91-92).

On the 13th day of November, 1975, Larry Broadhead was duly appointed the guardian of the person and estate of Carna L. Peterson, and on November 22, 1975, by his attorney Jackson Howard, he notified the respondents of the family's intent to vacate the deed, demanding reconveyance of the property. (Ex. 7).

This suit was then instituted against the respondents around the 19th of December, 1975, with the appellants alleging that Carna Peterson was incompetent at the time of the transaction, that she had received less than the full consideration for the property and that the respondents had exercised undue influence over Carna Peterson. On the 29th of July, 1976, the State of Utah intervened to protect its interest in the property.

The trial court after a trial on the merits, ruled that Carna Peterson understood the transaction and was not under any undue influence or duress, but made no finding as to the reasonableness of the consideration received by her or the State of Utah.

ARGUMENT ON APPEAL

Appellants' contention on appeal is that the trial court's findings are against the great weight of the evidence produced at trial. This appeal seeks a review of the trial record and a reversal of the trial court's findings.

POINT I

THIS COURT, SITTING IN EQUITY, SHOULD REVIEW THE COMPLETE RECORD AND REVERSE THE TRIAL COURT IF ITS DECISION IS AGAINST THE PREPONDERANCE OF THE EVIDENCE.

A suit to vacate the deed of an incompetent is a classic exercise of the court's equity jurisdiction. 41 Am.Jur.2d Incompetent Persons §92 Et Seq. See also Anderson v. Thomas, 108 Utah 252, 159 P.2d 142 (1945). As such, this Court has both the duty and the prerogative to review the law and the facts of the trial court and make its own findings and substitute its judgment for that of the trial court. Article VIII, Section 9, Constitution of Utah; Rule 72(a) Utah Rules of Civil Procedure; Mitchell v. Mitchell, 527 P.2d 1359 (Utah, 1974); and Baker v. Hatch, 70 Utah 1, 257 P. 673 (1927). In effect, this court has a trial de novo on the record. Jensen v. Howell, 75 Utah 64, 282 P. 1034 (1929). On such a review, if, after making due allowance for the better opportunity of the trial court to observe the demeanor of the witnesses, determining their credibility and weight of their testimony, the Supreme Court is persuaded that the findings of the trial court is against a fair preponderance or greater weight of the evidence, then it should direct the findings and remand the case for further proceedings. Jensen, supra, and Burgess v. Colby, 93 Utah 103, 71 P.2d 185 (1937). The test applied on such an equity review is whether the trial court's findings are against the greater weight of the evidence, or if the evidence clearly outweighs,

or is inconsistent with, the trial court's finding. Wilson v. Cunningham, 24 Utah 167, 67 P. 118 (1901); and Paxton v. Paxton, 80 Utah 540, 15 P.2d 1051 (1932).

POINT II

THE WEIGHT OF THE EVIDENCE IS CLEARLY AGAINST THE TRIAL COURT'S FINDING THAT CARNA PETERSON UNDERSTOOD THE TRANSACTION WITH THE RESPONDENTS.

a. Applicable Test:

The test for determining whether a person had sufficient mental capacity to contract was stated in O'Reilly v. McLean, 84 Utah 551, 37 P.2d 770, (1934), wherein the court quoting from Hatch v. Hatch, 46 Utah 218, 148 P. 433 (1915) adopted the test stated in Teegarden v. Lewis, 145 Ind. 98, 40 N.E. 1047, 44 N.E. 9, as follows:

In ordinary contracts the test is; Were the mental facilities so deficient or impaired that there was not sufficient power to comprehend the subject of the contract, its nature and its probable consequences, and to act with discretion in relation thereto, or with relation to the ordinary affairs of life?

This has also been adopted as the test in determining whether or not the grantor of a deed has sufficient mental capacity to make the deed. Anderson v. Thomas, supra. In addition, strict scrutiny of any transaction between an extremely aged or severely ill person and others should be imposed by the court reviewing the same. Anderson, at 148. (Concurring opinion of Justice Turner). See also Seequist v. Seequist, 524 P.2d 598 (1974).

Of some interest to the case presently before this Court is Burgess v. Colby, supra. There the court quoted extensively from the record giving some guidance of the factual analysis that needs to occur on appellate review. For example, the Supreme Court determined in reviewing the trial court's and jury's finding, that independent witnesses should be given more weight than those who have an interest in the outcome. Burgess, at 196. The Court further stated that the ability to ". . .talk about the affairs of the day, of his travels, of the farm and its care, and to recognize his friends when they called" were also important considerations, showing the mental state of a purported incompetent. Burgess, at 196.

b. Evidence Showing Incompetence.

The record is replete with testimony of the incompetence of Carna Peterson and her inability to understand even the ordinary affairs of life. For example, she could not comprehend when her property taxes were due, (R. 30), or what bills were paid or when they were due. (R. 32). She thought that she had been in the rest home for four years when in fact she had only been there one year and a half. (R. 54). She claimed that the rest home was trying to starve her and that the family had not been to see her for four years which were both untrue. (R. 35). She would become confused about the maintenance of her property including watering the lawns. (R. 35). In fact, two witnesses even testified that

Carna Peterson suffered from hallucinations, that she thought

that her deceased husband was visiting her from time to time. (R. 35, 60). She often forgot when she had visitors (R. 49) and didn't recognize people when they did visit her. (R. 64). She often rambled about past occurrences (R. 64) and when she wrote letters, they suffered from the same lack of understanding and coherence, (R. 66), often being addressed to the wrong individual. (R. 117).

In addition to the testimony cited above by close family and personal friends, independent witnesses who had no stake in the outcome of this matter also testified about her inability to understand this type of financial transaction. Her doctor, Dr. Steele, who had treated her for a period of over twenty years stated:

I don't believe that she was competent to handle abstruse financial affairs. She was competent to handle her own personal hygiene and social intercourse, but I believe that her estimation of values, her memory was going, and she was having trouble in facing reality. She was confused at many intervals. (R. 121).

Dr. Boston who had treated her since 1972, gave similar testimony. (R. 182-184).

Carna Peterson's nurse at the rest home stated that she was incompetent to sign the deed and would not understand the same. (R. 128). In fact, the assistant administrator of the rest home testified in addition to her being unable to handle financial matters, she was unable to care for her own needs much of the time. (R. 117).

Probably the most persuasive testimony of Carna Peterson's

inability to understand the transaction she entered into came from her own lips:

Q. Did you sell your house? Did you sell your house?

A. No, I didn't sell it.

Q. What happened to it?

A. Well, it just needed. (sic)

Q. Who needed it?

A. Somebody that produce two keys could produce one.

Q. Did you sell your house? Do you remember whether you sold your house? Did you sell your house to anybody?

A. I did not sell my home.

Q. Did you give it away?

A. No, I did not give it away.

Q. What did you do with it?

A. I talked with them, and they thought it would be the best for them to be the owner of my home.

Q. Who was going to be the owner of your home, your family? Did you give your home to your family?

A. No. They didn't ask anybody. They didn't even ask me.

Q. Well, who has your house: Who took your house from you? Who has it? Does anybody?

A. Nobody has it, but they are renting.

Q. I see.

A. Divide it up among the family. And my daughter and a boy Dale has charge of that. (R. 23-24).

property (Ex. 1; R. 50, 70).

This testimony is especially important in light of the uncontroverted testimony of three witnesses that there had been very little if any deterioration in her mental state from the time of the transaction to the time of her testimony in court. (R. 57, 119, 129).

Finally, Don Gowers, who was the only other person who testified who was present at the execution of the deed except Milton Harmon and the respondents, testified under oath that he left and would have nothing further to do with the transaction because he thought she was incapable of understanding the transaction, (R. 133), and her family should be notified before it was consummated. (R. 133).

Juxtaposed against this testimony is that of the respondents' witnesses concerning Carna Peterson's competency. For example, the respondents put Lucille Shepherd on the stand to testify. When asked for her opinion concerning Mrs. Peterson's competency, however, she merely answered that Carna Peterson was a determined woman, never really addressing the issue of her competency. (R. 164). Again, when the respondents put Enid Worwood on the stand she testified that Carna Peterson knew who Mrs. Worwood was when she visited with her, but when asked if she was capable of handling a transaction involving the sale of her house, Mrs. Worwood had to admit:

Well, I really couldn't say other than I could tell you that she talked to us, she knew people that we knew, she asked about people. (R. 206).

The memorandum decision of the lower court based its findings of Carna Peterson's competence primarily on the testimony of Milton Harmon. His testimony is inconsequential in comparison to that of the other witnesses. He had only a short limited contact with Carna Peterson on two occasions (R. 87, 97, 134) and was not personally acquainted with her prior to the dates of the transaction. (R. 96, 97). In fact, he judged her to be in her late seventies or early eighties when in fact she was much older. (R. 96). He came at the respondents request (R. 76) and did not have sufficient time to ascertain the aberrational character of Mrs. Peterson. When asked about her ability to understand the transaction, he admitted that he really could not testify about that, but that she appeared to be a "pleasant, bright, alert lady." (R. 97). If he had known about her incompetency, presumably he would not have proceeded with the transaction since to do so would have been a breach of the ethical standards of the legal profession. Were he to testify in any other manner, it would be an admission to unethical conduct. Due to the short time he was with her, however, he was unable to ascertain her competency to the same degree that others had, such as her doctors and nurses, who had seen her for more extended periods of time.

c. Argument.

The record is clear that Carna Peterson was unable to understand the transaction she entered into with the respondents. She was 91 years old and was living in a rest home

due to her inability to take care of herself at the time of the transaction. The evidence is thus clearly against the trial court's finding that Carna Peterson understood the transaction she entered into with the respondents.

POINT III

THE WEIGHT OF THE EVIDENCE IS CLEARLY AGAINST THE TRIAL COURT'S FINDING THAT NO UNDUE INFLUENCE WAS EXERTED OVER CARNA PETERSON.

a. Undue Influence.

When determining whether a conveyance was procured by duress and undue influence, the state of the subject's health of body should be considered as bearing on his will to resist and the likelihood of it being overcome. Johnson v. Johnson, 9 Utah 2d 40, 337 P.2d 420 (1959). As stated on several occasions by this Court:

The condition of a man's mind is but shown by specific examples of his conduct. Johnson, supra at 423.

The aberrational actions of Carna Peterson were clearly set out in the record as discussed in Point II of this brief. Added to this is the rule adopted by most courts that whenever there is great weakness of mind in a grantor arising from age, though not necessarily amounting to total insanity, if the consideration given for the property is grossly inadequate, the court of equity will infer undue influence and set such conveyances aside. Buchmayer v. Buchmayer, 68 Cal.2d 462, 157 P.2d 9 (1945); Morgan v. Thompson, 46 N.M. 282, 127 P.2d 1037 (1942); and Davis v. Hulburt, 242

P.2d 784, 194 Or. 534 (1952). C.f. Walker Bank & Trust Company v. Walker, 17 Utah 2d 390, 412 P.2d 920 (1966).

The weight of the testimony clearly shows that the value given for the property was grossly inadequate. Ted Garfield, a qualified appraiser testified that the property was worth \$11,800. (R. 105). The respondent's bank appraiser testified that the appraised value was \$12,000 to \$14,000, (R. 126) before any improvements were made (R. 125) and they did in fact make a loan of \$6,000 to the respondents on the home. (R. 114). Another bank appraiser was called by the respondents who testified that the home was worth only \$6,000. (R. 229). He, however, admitted that he did not make any comparables for the area of the property, (R. 227), did not have any other dealings in that area (228), and there was a real question concerning his qualifications as an expert. (R. 229).

A lay appraiser of the respondents testified that the property was worth close to what the respondents paid for it, but he admitted that he had little or no experience, (R. 217, 223-224), and that he estimated the acre of ground to be worth \$500 and the house \$2,500 in 1975. (R. 218). There was also evidence that the witness signed his appraisal letter (Ex. 9) at the request of the respondents who prepared the same. (R. 154-155).

b. Confidential Relationship.

This Court has ruled on many occasions concerning

". . . when a confidential relationship is shown to exist and a gift or conveyance is made to a party in a superior position, a presumption arises that the transaction was unfair. This presumption has the force of evidence and will itself support a finding if not overcome by countervailing evidence." Johnson supra at 422.

This Court has further held that for a confidential relationship to be found it must be shown that:

The relationship must be such as would lead an ordinarily prudent person in the management of his business affairs to repose that degree of confidence in the other party which largely results in the substitution of the will of the latter for that of the former in the material matters involved in the transaction. The doctrine of confidential relationship rests upon the principle of inequality between the parties, and implies a position of superiority occupied by one of the parties over the other. Mere confidence in one person by another is not sufficient alone to constitute such a relationship. The confidence must be reposed by one under such circumstances as to create a corresponding duty, either legal or moral, upon the part of the other to observe the confidence, and it must result in a situation where as a matter of fact there is superior influence on one side and dependence on the other. Bradbury v. Rasmussen, 16 Utah 2d 378, 401 P.2d 710 (1965).

There is strong evidence of a confidential relationship between the respondents and Carna Peterson. Their grandmother was the roommate of Carna Peterson in the resthome. (R. 54). Mrs. Peterson indicated her love, affection, and trust for the respondents and their family. (R. 26, 77). The respondent's grandmother was a witness to the transaction and execution of the deed. (R. 83, 84). This, coupled with the facts that Carna Peterson was 91 years of

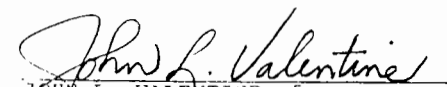
complete the transaction, (R. 76) and then threatened the welfare agent not to contact the family about the transaction (R. 136), indicates the undue influence exerted on Carna Peterson. This is especially true in light of the confidential relationship existing between the respondent's grandmother and Mrs. Peterson which itself gives rise to a presumption of undue influence. Johnson, supra.

The record is clear and the testimony uncontroverted that Carna Peterson was pliable and amenable to pressures of people. (R. 14). As she herself testified, "they (the respondents) thought it would be best for them to be the owner of my home", (R. 24), and she didn't really want to sell it to anyone. (R. 25).

CONCLUSION


Upon a complete review of the record in this matter, the Court should reverse the trial judge's findings that Carna Peterson knew and understood the transaction she entered into with the respondents. The great weight of the evidence is against any other finding. In addition, the weight of the evidence shows that this 91 year old lady living in a rest home, was the victim of undue influence of the respondents and that a confidential relationship existed between the respondents grandmother and thus the respondents and Carna Peterson. This Court should reverse the trial court's findings on these issues and send this case back to the trial court for further proceedings.

Respectfully submitted this 20th day of September,
1977.


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MAILING CERTIFICATE

I hereby certify that on the 21st day of September,
1977, I personally mailed two (2) copies of the foregoing
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