1977

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

Utah Supreme Court

IN THE SUPREME COURT
OF THE STATE OF UTAH

CARNA L. PETERSON, by LARRY BROADHEAD, Guardian,
Plaintiff-Appellant,

vs

DAVID H. CARTER and JANET S. CARTER,
Defendants-Respondent,

STATE OF UTAH, by and through UTAH STATE DEPARTMENT OF SOCIAL SERVICE,
Intervenor.

Case No. 15,310

BRIEF OF DEFENDANTS-RESPONDENTS

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

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CASES CITED

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STATEMENT OF NATURE OF CASE

This is a suit brought by the guardian of Carna Peter plaintiff-appellant (hereinafter referred to as appellant), to vacate a deed on the basis of said person's alleged incompeten and of alleged undue influence exercised over her by the defend respondents (hereinafter referred to as respondents) at the ti of execution of her warranty deed to respondents.

DISPOSITION IN THE LOWER COURT

After having heard the evidence and arguments of counsel, and having taken the matter under advisement, the Court ruled that the appellant herein failed to establish by a preponderance of the evidence the invalidity of the warranty deed dated September 2, 1975, by which respondents acquired subject property. Based primarily upon the testimony of Milto T. Harmon, Esq., the Court found that the grantor in said deed knew and understood the nature of the transaction, the lien position of the State of Utah, and the consequential limitatio on benefits to be derived by her from a sale of her property.

The Court further ruled that the evidence did not sho that the respondents defrauded the grantor or the State of Uta over-reached, exerted duress or undue influence, or otherwise committed any unlawful act in negotiating for and acquiring said property.

STATEMENT OF FACTS

In 1972, it came to the knowledge of the respondents that Mrs. Peterson wanted them to have her home. After extensive groundwork had been laid respondents were told that Mrs. Peterson had changed her mind. Her family disapproved of the sale. (R.162)

Sometime later Mrs. Peterson moved from her home to her daughter Anna's and several months later to the Colonial Manor Resthome in Nephi, Utah. The home in question was left vacant from 1973 to September 1975. Its condition became generally run down. (R.209)

Along in August of 1975 respondents were again contacted and told that Mrs. Peterson wanted them to come in and see her because her house was deteriorating, no one was living in it, her garden wasn't being taken care of and she wanted to go ahead with the sale. (R.171) Before visiting Mrs. Peterson, respondents contacted Larry Broadhead, (later appointed Mrs. Peterson's guardian), to tell him what Mrs. Peterson wanted and that respondents didn't want any hard feelings or any problems with Mrs. Peterson's family. Larry Broadhead said that he had no objections and that he wouldn't become involved with it.(R.171, 172).

Upon respondent's request, Milton Harmon, Esq., and Dave Gowers, the State Welfare agent, met with Mrs. Peterson and explained what financial implications the sale would have.

Milton Harmon was acquainted with Mrs. Peterson's family and had represented them on previous occasions. (R.173) After meet with Mrs. Peterson, Mr. Harmon called Anna Broadhead, Mrs. Peterson's closest living relative, to inform her of the plans to purchase the property and to ask if there were any objectio Anna called Mr. Harmon back to inform him that she thought it would be best to sell the property. (R.81)

On the following day, September 2, 1975, Milton Harmo brought the deed to the resthome and Mrs. Peterson conveyed th subject property to the respondents. At that time the State Welfare Department had a lien on the property and intended to give Mrs. Peterson $1,000.00 for any sale of the property for her funeral expenses. The remainder would go to the State to release their lien.

Sherman Peterson was requested by the State to appra the value of the land. (R.209) He quoted the State a figure o $3,200.00. (R.210) The respondents paid the appraisal figure and the State released its lien on the 70 year old, four room home. (R.107)

After conveyance of the deed, respondents set about to repair the home. First they replumbed the entire house. Then they put in new floors, lowered the ceiling, paneled wal repaired window and door frames, painted, rewired, dug a new cesspool (R.187), cleaned out old trees and fences, hauled off garbage (R.188). On November 22, 1975 respondents were notif of a pending action against them. They immediately ceased wo

on their home, as their investment in time and money was considerable.

On the 19th of December, 1975, Larry Broadhead brought suit as newly appointed guardian for Mrs. Peterson. He alleged that Mrs. Peterson was incompetent at the time of the transaction, that she had received less than full consideration for the property, and that the respondents had exercised undue influence over Mrs. Peterson. On the 29th of July, 1976, over seven months later, the State of Utah intervened.

The trial court ruled in favor of the respondents on the validity of the deed because appellant failed to establish his allegations by a preponderance of the evidence. The Court also found no undue influence or any unlawful act in negotiating for the property, and that respondents were not guilty of defrauding the grantor or the State of Utah.

ARGUMENT

POINT NO. I

THIS COURT, SITTING IN EQUITY, SHOULD NOT DISTURB THE FINDINGS OF THE LOWER COURT BUT SHOULD SUSTAIN THEM AS A PROPER APPLICATION OF THE LAW TO THE ESTABLISHED FACTS.

In an action to cancel a deed executed by an alleged mental incompetent, or one allegedly mentally weakened and acting under undue influence, the presumption is in favor of the correctness of the judgment of the trial court and the Supreme Court and the Supreme Court will not disturb the findings of the trial court unless they are against the clear weight of evidence. Mathews v. Pederson, 204 Okl. 687, 133 P.2d 971(1951).

The credibility of witnesses and weight of evidence in such a case is for the trial judge who sees and hears the witness to determine. Wilson v. Sampson, 91 Cal.App.2nd 953, 205 P.2 753 (1949).

"The Supreme Court assumes that the trial court bel those aspects of the evidence which support his findings and judgment." Robertson v. Hutchison, 560 P.2d 1110 (Utah 1977), Cornia v. Cornia, 80 Utah 486, 15 P.2d 631 (1932). The evide in this case on appeal should be viewed in light most favorab to sustaining the lower court. Brown v. Board of Education of Morgan Co. School Dist., 560 P.2d 1129 (Utah 1977), Cutler v. Bowen, 10 Cal. App. 2d 31, 51 P.2d 164 (1935).

POINT NO. II

THE TRIAL COURT CORRECTLY RULED THAT THE GRANTOR HAD SUFFICIENT MENTAL CAPACITY AT THE TIME OF EXECUTION OF THE DE

a. Test of Capacity

Whether in property law or in Contract law the test is the same concerning the mental capacity of one who conveys property or contracts with another. It has been stated in Anderson v. Thomas, 108 Utah 252, 159 P.2d 142 (1945):

> "The test whether grantor has sufficient mental capacity to make a deed is: Were mental facilities so deficient or impaired that there was not sufficient power to comprehend the subject or the deed, its nature, and its probable consequences, and to act with discretion in relation thereto, or with relation to ordinary affairs of life?"

See also Hatch v. Hatch, 46 Utah 218, 148 P. 433 (1914), Matt of Woodward, 549 P.2d 1207 (Okl. 1976), and Armstrong v. Ande 471 P.2d 326 (Okl. 1966). By this test the trial court was c correct in determining Carna Peterson competent to execute th warranty deed.

During the time period in which the transaction occurred Mrs. Peterson coherently expressed her purposes in selling the property. She wanted respondents to have the home because:

1. She didn't intend to return there (R.77),
2. She had worked with them on selling the home at a prior ocassion, but it had not come about (R.77),
3. She "thought a lot of these people" (R.77),
4. She wanted someone to have the home that would live in it (R.174),
5. None of her family needed it (R.174).

These statements give great weight to the proposition that Mrs. Peterson had sufficient power to comprehend what she was doing.

Mrs. Peterson also asked the following questions and was advised accordingly:

1. Would her welfare support be terminated upon sale of the home? This question was answered by Mr. Gowers, from the State Welfare Department. He told her if she did sell the home, support would not be terminated. (R.77)
2. What would happen to the money that came from the home? (Mrs. Peterson, acknowledging that she had given the Welfare Department a lien on the home, was concerned as to what would happen because of the lien.) This question was also answered by Mr. Gowers, as he advised her that she would receive the first thousand dollars to go into a trust to be used for her burial, the balance of the proceeds of the sale would go to the Welfare Department. (R.78) To this answer Mrs. Peterson immediately responded with question #3.

3. What about the money that would go into the trus
This question Mrs. Peterson asked of Milton Harmon,
Attorney at Law. She obviously understood that he wa
an attorney and that he would know about such matters.
Mr. Harmon advised her that she would not be able to
spend it and it would go to a bank and be in trust by
some other member of the family. (R.78).

Clearly Mrs. Peterson understood the probable consequ
of her decision to sell her home. By her comments and questions
she displayed the ability to interact effectively in this trans-
action "and to act with discretion in relation thereto." Anders
v. Thomas, supra.

Confronted with the fact that some in her family might not approve of the sale and if she was sure she wanted to go through with it, she replied that "Anna didn't want her to sell the property, but it was her property and she was going to do with it what she wanted to do with it and she wanted to sell it to Mr. Carter." (R.78) Mrs. Peterson was obviously aware of the consequences of the sale as to her family relations and also of her right as the owner of the property to dispose of it as she saw fit.

The day of the conveyance, upon affirmance that she still wanted to sell the property, Mrs. Peterson told Milton Harmon, Exq., who was conducting the transaction, that she trusted him and expected that the $1,000.00 for her burial would be administered properly. (R.84) Mrs. Peterson herein shows her

ability to understand the weighty matter of her funeral expenses and administration at the actual time of the conveyance of the deed.

In the opinion of Milton Harmon, Esq., as to Mrs. Peterson's competency to sign the deed, "there was no question in my mind that she knew what she was doing and she wanted the home to go to Mr. and Mrs. Carter." (R.86)

Respondents respectfully submit that Mrs. Peterson had the necessary capacity at the time of the execution of the deed to convey her property.

b. Prior and Subsequent Evidence

In the leading case of Tate v. Murphy, 202 Okl. 671, 217 P.2d 177, 18 ALR.2d 892 (1950), the court settled the basic issues involved in the case at Bar. One point that was determined by the Court was that while evidence of mental capacity prior and subsequent to the transaction was admissable, evidence of mental capacity at the immediate time is controlling. See also Estey v. Haughian, 112 Mont. 36, 113 P.2d 325 (1941), and Mathews v. Pederson, supra. At trial, in addition to witnesses for respondents testifying of Mrs. Peterson's coherent conversations; five of the appellant's witnesses acknowledged that Mrs. Peterson did have lucid intervals and intermittent times in which she carried on conversations and understood what was going on. (R.57, 65,118,130,183) All except one of the appellant's witnesses that knew Mrs. Peterson testified as to her general condition prior and subsequent to the actual time the deed was executed. This

evidence, submitted for the proposition that Mrs. Peterson was incompetent at the time the deed was executed, was found lacki in weight by the trial court; as was her own testimony at tria some two years after the actual act.

c. Lucid Intervals

Tate v. Murphy, supra, also sets forth an applicable ruling on capacity to convey a deed when a person of years may be known to have incompetent moments. The Court states:

> "A person of week mentality whose incompetence has not been judicially determined may be capable of executing a valid conveyance or other contract during lucid inte vals in which he is capable of understanding the natu and effect of his act, even though he is weak from old age and physical infirmities, may be irrational at tim and changeable in his views upon certain subjects, and may suffer eccentric hallucinations and express irrati views when sick and under the influence of sedatives."

This ruling allows for a rather wide range of infirmities as discussed by the appellant's witnesses and still the subject may have the necessary capacity during a lucid interval to exec a deed. In the Matter of Woodward, Supra, another long list of infirmities of the grantor is ruled out as conclusive of incom ency at the time of conveyance of a deed. The Court ruled that the testimony of isolated instances of failing memory, testimon of forgetfulness and wandering of mind, testimony that the gran was untidy, appearing confused and vague, even physicians' testi that the grantor was afflicted with a chronic brain syndrome of senility were all insufficient to warrant setting aside the dee for lack of mental capacity at the time of the conveyance. The Court further stated that "the law does not require the grantor of a deed to be completely competent." The grantor is only

required to pass the test of capacity: the grantor must have the ability to understand the nature and effect of the act at the time the conveyance is made. Burgess v. Colby, 93 Utah 103, 71 P.2d 185 (1937).

The policy for this is obvious. If an elderly person showed signs of incompetency in any way, their estate would soon be subject to disposition by someone else regardless of recovery of health, because it could always be proven that at some time the subject was incompetent. This would be a rather hard pill to swallow. The rule of competency at the time of the conveyance allows for the many people that recover from their illnesses, or that experience coherent times in between, to still exercise their right to dispose of their property as they see fit.

The respondents respectfully submit that Mrs. Peterson by her own instigation of the sale and by her questions, conversation, and statements shows her capacity at the time of the conveyance as required by the test in Anderson v. Thomas, Supra.

d. Procedure

It must be remembered that incapacity to make a deed should be established by a preponderance of the evidence or by clear, satisfactory, and convincing evidence. Tate v. Murphy, Supra, Armstrong v. Anderson, Supra. In an action to set aside a deed on grounds of lack of mental capacity of the grantor, the presumption is that the grantor had mental capacity to execute the deed and the burden of proof is upon the party attacking the validity of the deed. Matter of Woodward, Supra, Wilson v. Sampson, Supra, Westover v. Harris, 47 N.M.112, 137 P.2d 177(1943),

Higgins v. Pipkin, 360 P.2d 231 (Okl. 1961), Hackett v. Hacke 429 P.2d 753 (Okl. 1967). As stated by the trial court, this burden of proof was not met.

POINT NO. III

THE TRIAL COURT CORRECTLY FOUND THERE WAS NO UNDUE INFLUENCE OVER MRS. PETERSON.

Appellant has alleged that because respondent's grand-mother and Mrs. Peterson were friends there was suspicion of undue influence. During trial, evidence was found lacking in weight to support this allegation. The Court in Anderson v. Thomas, Supra, held:

> "In suit to cancel a deed for undue influence, plaintiff must show that grantee exercised a dominating influence over grantor and thus induced grantor to execute the deed and merely raising suspiciion of such influence would not be sufficient."

There was no proof that respondents at any time "exert a dominating influence over the grantor". Indeed, during the conveyance Mrs. Peterson spoke quite freely. (R.84) An attorn was there to oversee the transaction. "Undue influence must b established by clear and convincing evidence." Bradbury v. Rasmussen, 16 Utah 2d 378, 401 P.2d 710 (1965). In light of th fact that permission had been received from Mrs. Peterson's family to sell, why would undue influence be necessary? Since Mrs. Peterson had instigated the sale and would only receive $1,000.00 for her funeral expenses, how would undue influence serve the respondents? Indeed, the allegation is inconsistent with the facts.

Appellant has also alleged that between Mrs. Peterson and Respondents there may have been a confidential relationshi

However, even relationships of parent and child do not constitute evidence of such confidential relationship as to create a presumption of fraud or undue influence. Bradbury v. Rasmussen, Supra. Confidential relationships must be proven.

Appellant suggests that consideration was nominal and proof of undue influence. However, the respondents relied on the figure quoted by the State appraiser, as did the State Welfare Department. They were not asked to pay more than the $3,200.00 appraisal; they were merely asked to pay the appraisal figure.

According to 23 AM JUR 2d Deeds Sec 66, Et seq. "any valuable consideration, even a nominal sum of money, is sufficient as between the parties and their privies, to render a deed operative to pass title to property."

Where friendship has been shown to exist between buyer and seller it is certainly plausible that the seller may sell for a good price. But, even "love and affection are valid consideration for the execution of a deed." Crumley v. Smith, 397 P.2d 119 (Okl. 1964), Pailhe v. Pailhe, 247 P.2d 838 (Cal.App. 1952).

Respondents respectfully submit that appellant has not shown undue influence by the weight of evidence.

POINT NO. IV

THIS COURT SHOULD NOT ALLOW APPELLANT TO MAINTAIN A VEXATIOUS SUIT IN WHICH HE HAS NO STANDING AND IS NOT THE REAL PARTY IN INTEREST.

To enable one to maintain an action to enforce private rights, he must show that he has sustained some injury to his personal or property rights, and he must show that he will be

benefited by the relief granted. State ex rel. Geberdt v. Superior Court for King Co., 15 Wash. 2d 673, 131 P.2d 943 (1942), State ex rel. Harp v. Wilson, 17 Wash. 670,137 P.2d 105 (1943). An action which is merely vexatious, or which is unnecessary and cannot produce any practical results ordinarily cannot be maintained. 1 CJS Actions Sec. 21.

Respondents contend that this is merely a vexatious claim from which the appellant will receive no benefit. The only purpose for rescinding the sale will be to give Mrs. Peterson's family a chance to purchase the property themselves. This suit is not being brought in the name of Mrs. Peterson's family, however. It is to rescind a sale of Mrs. Peterson's home for her. As Mrs. Peterson had foreseen, she will need to be cared for at a resthome and it would be very unlikely she would ever use the property again. Therefore, what can Mrs. Peterson gain in this action? Nothing. She has already disposed of the property as she desired and she has received all that she can monetarily receive regardless of who the purcheser may be. Her practical results for bringing this suit are of no benefit to her.

It has been common to courts of equity for years that actions must be prosecuted in the name of the real party in interest. 59 AM JUR 2d Real Party in Interest Sec. 38 Et seq.. The real party in interest provisions are intended to bring before the court the party rightfully interested in the litigation, so that only real controversies will be presented and the judgment when entered, will be binding and conclusive, and so the defendant will be saved from further harassment or vexation at the hands of other claimants. Anheuser-Bush, Inc. v. Starley, 28 Cal.2d

347, 170 P.2d 448, 166 ALR 198 (1946), Caughey v. George Jenson and Sons, 74 Idaho 132, 258 P.2d 357 (1953).

Respondents submit that the only real party in interest is the State of Utah (Welfare Department). The State intervened at trial because it would make a difference to them how much the property sold for. If the sale is rescinded and the property resold for a higher price, the State is the only party that can receive benefit. Therefore, the State is the only party that has standing and a valid interest in the proceedings. Mrs. Peterson has received all that she will ever receive from the sale of the land and house.

Respondents respectfully submit that the appellant is maintaining a vexatious suit and is not the real party in interest.

STATE OF UTAH

The State of Utah accepted their appraiser's figure of $3,200.00 for the property, and upon payment by respondents, released their lien on the property. (R.176) The State of Utah cannot now claim that they have not received adequate money for the release of their lien.

CONCLUSION

Upon a review of the facts of this case, the Court should sustain the trial judge's findings that Mrs. Peterson knew and understood the nature of the transaction and the consequences derived by her from a sale of the property. The evidence of the proceedings during the actual time of the conveyance supports this conclusion. The Court should also sustain the trial judge's findings that the evidence did not show the respondents

exerted undue influence, duress, or committed any unlawful act in negotiating for and acquiring subject property.

Respectfully submitted this 3 day of November

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MAILING CERTIFICATE

Mailed a copy of the foregoing Brief of Respondents to John L. Valentine, for Howard, Lewis & Petersen, 120 East 300 North, Provo, Utah 84601 and to Mr. Steven Schwendiman, Attorney for Intervenor, 231 East 400 South, Salt Lake City, Utah 84111, this 3 day of November, 1977.