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Reuel Christensen v. Ellsworth W. Rasmussen : Brief of Respondent

Utah Supreme Court

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REUEL CHRISTENSEN (John McAllister substituted), Administrator of of the Estate of James A. Rasmussen, deceased, et al.,
Plaintiffs and Respondents,

vs.

ELLSWORTH W. RASMUSSEN, also known as WANLASS RASMUSSEN OR WAN RASMUSSEN and BLANCHE RASMUSSEN, his wife,
Defendants and Appellants.

Case No. 13663

RESPONDENTS' BRIEF

APPEAL FROM THE JUDGMENT OF THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY, STATE OF UTAH, THE HONORABLE MAURICE HARDING, JUDGE

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CASES CITED

IN THE

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STATEMENT AND NATURE OF THE CASE

Plaintiffs as Administrator and Guardian of the Estates (hereinafter Administrator) of James A. and Sarah E. Rasmussen sued alleging certain transfers (of real property, grazing permits, waivers and sales) to defendants were either forgeries or a result of undue influence, fraud, and coercion, and therefore void.

DISPOSITION IN LOWER COURT

Plaintiffs-Respondents' Motion for New Trial was

granted and the trial court held that the Administrator of the two estates was, as opposed to defendants, entitled to possession of the real property and grazing permits, awarded the Administrator money damages and enjoined the defendants from asserting any claim or interest to said property except as defendant Ellsworth Wanlass Rasmussen is an heir and legatee of the estate.

RELIEF SOUGHT ON APPEAL

The judgment and decree of the trial court should be affirmed.

STATEMENT OF FACTS

At the time of his death on December 13, 1965, James A. Rasmussen left surviving him his wife Sarah Eta Rasmussen, and his seven children: Ruby R. Hill, Clinton D. Rasmussen, Ward B. Rasmussen, Alta R. Nielsen, the defendant Ellsworth Wanlass Rasmussen, Kenneth P. Rasmussen and Roger J. Rasmussen. His wife, Sarah Rasmussen died in April, 1967.

James A. and Sarah E. Rasmussen were for many years residents of Ephraim, Sanpete County, State of Utah. He had owned real property in Ephraim and meadow land west of Ephraim. Mr. Rasmussen had also raised hay and cattle, and had ranged his cattle on federal forest land pursuant to forest permits.

One of the children, defendant Ellsworth Wanless Rasmussen claims that in 1963 and again shortly before his death in 1965, that his father and mother (James A.

and Sarah E. Rasmussen) transferred to him, certain tracts of land, grazing permits, and cattle which transfers the plaintiff-respondent Administrator refuses to recognize as valid.

In late 1962 and early 1963, the defendant Ellsworth Wanlass and his brother Roger, decided as a joint venture to buy the cattle which were to be sold as part of the so called Bagnell Estate. In seeking to assist the defendant Ellsworth Wanless, Mr. Rasmussen, at the request of his son, the defendant Ellsworth Wanlass, deeded 10 acres to said defendant for the purpose of permitting him to use the land as security. Sometime after the proposed purchase of the cattle had fallen through, Clinton and Roger testified that Mr. Rasmussen had told them that he had tried to get his son Ellsworth Wanlass to deed the land back, but he had refused (Tr. Vol. I pages 68-69). The Administrator alleged that this conveyance from James A. and Sarah Rasmussen was made as an accommodation to the defendant Ellsworth Wanlass and was meant to assist him in obtaining financing with the express agreement and understanding that the property would be reconveyed at his request.

Ellsworth Wanlass Rasmussen disputes this and, while admitting that the conveyance arose out of an attempt to get a loan, claims that it was his father's intention to give him the property outright (Tr. Vol. I pages 28-29). It is not disputed, however, that until his death Mr. Rasmussen continued in his possession of this land, caring for it, cropping it and paying the taxes thereon.

In November of 1965, Mr. Rasmussen became seriously ill and was admitted to a Provo hospital and was discharged on November 11, 1965. His son, Clinton, testified that his father had told him on the way home from the hospital that his son Ellsworth Wanlass was putting pressure on him to get his land and that he was not about to let anyone have it (Tr. Vol. I page 73).

On November 27, 1965, Mr. Rasmussen was readmitted to the hospital in Provo, Utah, and underwent an operation on December 1, 1965. He was discharged on December 8, 1965 and returned home. He went into a coma on December 11, and was taken to the hospital in Mount Pleasant, Utah and died there on December 13, 1965.

Defendants claim, and the Administrator disputes, that Mr. and Mrs. Rasmussen executed a warranty deed dated December 1, 1965, and thereby conveyed 25 acres of land to the defendant Ellsworth Wanless Rasmussen (Exhibit 5). The Administrator alleged that the signature of James A. Rasmussen on the deed was a forgery, contending that on the day the deed purported to be signed and notarized in Ephraim, Mr. Rasmussen had undergone an operation and was confined to a hospital in Provo, Utah. This deed was recorded December 9, 1965, at the request of defendant Ellsworth Wanlass Rasmussen.

The following day two additional deeds were recorded at the request of the defendant. One purported to be a warranty deed from Sarah E. Rasmussen to W.

Ellsworth Rasmussen conveying 7.13 acres (Exhibit 7). The property described in the deed included the land and home in which James A. and Sarah E. Rasmussen were then living. The other deed (Exhibit 6) described essentially the same tract. Although this deed was also recorded December 10, 1965, it was dated July 9, 1954, and purported to transfer the tract from James A. Rasmussen to his wife. The Administrator contended that James A. Rasmussen had never delivered this deed to his wife Sarah and that it was ineffective, and that, therefore, the deed from Sarah Rasmussen to Ellsworth Wanlass Rasmussen was also ineffective to transfer any interest inasmuch as Mrs. Rasmussen did not own the property. The Administrator introduced at trial seven additional deeds from James A. Rasmussen to his wife Sarah all dated July 9, 1954. It was not disputed that these deeds were never delivered to Sarah Rasmussen, but rather remained at all times in the possession of Mr. Rasmussen as did the property described therein.

Moreover, it was not disputed that at the time of the purported tranfer from Sarah E. Rasmussen to the defendant W. Ellsworth that Mrs. Rasmussen was 87 years old, that she was severely hard of hearing and had much difficulty in seeing. The Administrator contended that the December 10 (Exhibit 7) deed was executed by her without knowledge of its nature and effect, and that upon being informed of that she had apparently executed a deed conveying the home in which she and her husband were living, she repudiated the transfer and attempted to have the property reconveyed.

Additioinal issues at trial involved the transfer of grazing permits and a bill of sale for cattle.

Exhibit 19 purports to be a transfer by James Rasmussen to Ellsworth W. Rasmussen of Forest Service grazing permits as to 22 head of cattle. Exhibit 17 is a bill of sale from James A. Rasmussen to defendant Ellsworth W. Rasmussen for 22 head of cattle. The face of both documents indicate that they are signed by the senior Mr. Rasmussen on December 9, 1965. The Administrator alleged that the signature on the grazing permit and bill of sale were forgeries.

ARGUMENT

POINT I.

THE TRIAL COURT CORRECTLY HELD THAT THE 1954 DEED (EXHIBIT 6) WAS NOT DELIVERED FROM JAMES A. RASMUSSEN TO HIS WIFE AND THEREFORE INEFFECTIVE TO CONVEY REAL PROPERTY.

Defendant Ellsworth Wanlass Rasmussen claims that before his father's death his parents gave him a deed dated July 9, 1954, purporting to transfer the family home and several surrounding acres of land from James A. Rasmussen to Sarah E. Rasmussen (Exhibit 6).

Defendants contend in Point I of their Brief on Appeal that the trial court erred in determining that the deed of July 9, 1954, (Exhibit 6) was not delivered by

Mr. Rasmussen to his wife and, therefore, ineffective. It is undisputed, however, that Exhibit 27 consists of 7 additional deeds all dated July 9, 1954, all of which purport to transfer property from James A. Rasmussen to his wife Sarah Rasmussen. Defendants do not dispute the fact that after 1954 Mr. Rasmussen retained all the deeds among his own personal papers and that he continued in possession of all the property described, that he farmed the property, that he worked the land, and that he paid the taxes on the property.

Defendants' contention that there was effective delivery of Exhibit 6 is not based upon any delivery to Sarah Rasmussen, but instead is based upon the possession of the defendant Wanlass Ellsworth who recorded it. Defendants argue that the only evidence of how the deed came into the possession of the defendant Wanlass Ellsworth and how it subsequently became recorded was defendant's own testimony. This testimony, however, produced no evidence that would tend to show that James Rasmussen ever delivered the deed to his wife. In fact, the defendant himself testified that he had no knowledge of the deed after 1954 and that he did not remember which of his parents had given him the deed (Tr. Vol. I pages 166, 196).

POINT II.

THE TRIAL COURT CORRECTLY RULED THAT SARAH E. RASMUSSEN DID NOT UNDERSTAND THE NATURE OF THE

WARRANTY DEED -(EXHIBIT 7) FROM HERSELF TO DEFENDANT WANLESS ELLSWORTH RASMUSSEN WHEN SHE SIGNED IT.

On December 10, 1965, Wanlass Rasmussen recorded a deed (Exhibit 7) purporting to transfer property from his mother to himself. (This deed covered the same property as referred to in Exhibit 6 discussed in Point I above with the exception of 1.01 acres which had been deeded by Mr. and Mrs. Rasmussen to the defendant Wanless Ellsworth in 1963; this conveyance of 1.01 acres to the defendant is not in dispute.)

With respect to Exhibit 7, the court made the following trial findings:

> At the time of said purported transfer by Warranty Deed of said property from Sarah E. Rasmussen to defendant, the said Sarah E. Rasmussen did not own said property; that said property was then, and at all times had been, owned by her husband, James A. Rasmussen, deceased (R. 143).
>
> Further, the court finds that at the time the said Sarah Rasmussen signed the deeds referred to in Findings 15 and 16 above, she was advanced in years, being of the age of 87 years, and was physically in poor health; that she was hard of hearing and suffered from poor vision so that she was unable either to hear or see very well; was enfeebled in body and had difficulty in caring for herself. The deed was executed by her without knowledge as to its nature and effect, and she was not aware that she

> was purportedly transferring and conveying to the defendant the property described in said deeds particularly the home in which she and her husband were then living. Neither transaction was explained to her, and she was not advised of the nature and effect of what she was doing. Nor was she given an opportunity to receive advice or counsel from anyone in respect thereto. Later, upon being informed that she had apparently executed a deed on the home to her son Ellsworth, she repudiated such purported transfer and attempted to have the property reconveyed by said defendant (R. at 154).

The following evidence supports these findings:

On December 14, 1965, the day after Mr. Rasmussen's funeral, there was a conversation in the Rasmussen home among Mrs. Rasmussen and the three sons, Clinton, Wanlass, and Kenneth. Clinton Rasmussen testified that he had asked his mother whether she had given Wanlass the property and she had answered, "No" (Tr. Vol. II pages 307-308).

Subsequently, in April of 1966, the family members met at Kenneth Rasmussen's home in Salt Lake City. Ward Rasmussen took charge of the meeting and stated that one purpose of the gathering was to ask Mrs. Rasmussen whether or not she had deeded or otherwise given the said property to her son Wanlass — if she were to say she had, the family was instructed to forget their claim to the property, but if she denied this, Wanlass was to release his claim to the property. At this time, Clinton Rasmussen testified that Wanlass asked his

mother, "You know you want me to have this property. If I don't get it, I won't have any," and that Mrs. Rasmussen had answered, "No, Wan [Wanlass], I didn't give you the property." Clinton Rasmussen further testified that Wanlass told his mother that his dad had given him the property some two or three years ago. Mrs. Rasmussen responded, "If he did, he never told me about it" (Tr. Vol. I pages 83-85 and 144).

The eldest child of Mr. and Mrs. Rasmussen, Ruby Hill, testified that on the day following her father's funeral she had remained home with her mother while the rest of the family members had attended another funreal. At this time she had asked her mother whether she knew that she had signed a deed conveying her home, and the property it was on, to her son Wanlass and Mrs. Rasmussen had replied that she had signed no deeds and had not given any deeds to her son Wanlass. She did state that a man had come to her home; he had sat at the table, but she could not see or hear him very well and did not recognize him. Mrs. Rasmussen said that in the presence of this man (apparently the notary) she had signed some grazing permits which her son Wanlass told her would be lost if she did not sign them (Tr. of first trial Vol I pages 248-250, Vol. II 251). (This testimony was admitted into evidence by stipulation at the second trial.)

The fact that Mrs. Rasmussen had failing eyesight and very poor hearing is not disputed. Moreover, defendants admit that Mrs. Rasmussen was in failing health

and in a position to be dominated by her children (Respondents' Brief at 5). No one was in a better position to dominate his mother during the period in question than the defendant Wanlass Rasmussen. He lived next door to his mother and she would have naturally trusted and relied upon him during this period of her husband's illness. Among other things she relied upon him in that he prepared checks for her signature during her husband's illness (Tr .Vol. II p. 282).

The evidence adduced at trial was that Mrs. Rasmussen was unaware of the nature and effect of the deed and that she was not aware that the deed purported to transfer and convey to the defendants the home in which she and her husband were then living. There was no evidence that the transaction was explained to her and she was not advised of the nature and effect of what she was doing. She was not given an opportunity to receive counsel or advice from anyone except the defendant Wanlass Rasmussen, and subsequently on being informed that she had apparently executed a deed transferring her home to Wanlass, she repudiated the transfer and attempted to have the property reconveyed to her by said defendant both orally and by a written statement signed by her (Exhibit 20). After evaluating the credibility to be given each witness, the evidence establishing these findings was ample for the trial court to make its determination.

POINT III.

TRIAL COURT CORRECTLY FOUND THAT

THE 1963 DEED (EXHIBIT 3) WAS GIVEN TO DEFENDANT WANLASS RASMUSSEN CONDITIONALLY AND THAT THE PROPERTY WOULD BE RECONVEYED UPON REQUEST.

The admitted purpose of the transfer evidenced by Exhibit 3 was to permit James Rasmussen's son, the defendant Wanlass Rasmussen, to use the property as security for a Farmers Home Administration loan (Appellants' Brief at 6). The administrator argues that this transfer was conditional and was for the purpose of obtaining financing only. This fact was substantiated by the testimony of Clinton Rasmussen who testified that his father told him that he had asked his son Wanlass to return the land, but that he had refused to do so. Kenneth Rasmussen also testified that his father had told him that Wanlass refused to reconvey the property. The nature of the transaction is further clarified by the undisputed fact that Mr. Rasmussen continued to farm the property, continued to exercise control over it, crop the property, work on the property, and pay the taxes on the property.

Defendants attempt to make much of the fact that James A. Rasmussen had earlier required his son Wanless in return 10 acres before his son moved to Las Vegas, which had been deeded to Wanlass in 1932 when 10 acres had also been deeded both to Clinton and Kenneth. The defendant admitted, however, that these deeds were not meant as transfers (Tr. Vol. I page 274). And it is clear

that Mr. Rasmussen intended to take care of the formality of having these sons deed these properties back to him. In fact in 1954 deeds were prepared which would have deeded this property back to Mr. Rasmussen (Exhibit 27). It is significant that neither Kenneth Rasmussen nor Clinton Rasmussen have claimed any interest in the property pursuant to these deeds and that they both have always recognized that the deeds were to be used solely for the purpose of obtaining grazing permits. Even the testimony of Wanlass Rasmussen substantiates the fact that the purported transfer of the ten acres to Wanlass in 1963 was conditional:

> Q. So far as you are concerned, if your father had asked for that 10 acres back which was deeded to you in 1963 if he [had] asked for it back before he died, you would have given it to him, wouldn't you?
>
> A. Yes (Tr. Vol. I page 245).

Moreover, James Rasmussen had executed other deeds which were undisputedly not intended to convey property (Tr. Vol. I pages 158-159 and 274). This fact lends further support to the finding that this particular transfer was conditional. Even the testimony of the defendant offers little support for the argument that the deed was given unconditionally.

The trial court heard the witnesses and evaluated the credibility of each. The court's finding should be affirmed.

POINT IV.

THE TRIAL COURT CORRECTLY HELD THAT THE SIGNATURE OF JAMES A. RASMUSSEN ON EXHIBIT 5 WAS A FORGERY.

Exhibit 5 purports to be a warranty deed transferring 25 acres from James A. Rasmussen and his wife to the defendant Ellsworth Wanlass Rasmussen. The administrator contended that the signature of James A. Rasmussen had not been authored by him and the trial court so held.

Robert F. Grube was called as an expert witness to examine the signature of James A. Rasmussen on Exhibit 5 and to testify as to the author of the signature. Mr. Grube had been employed by the United States Secret Service for 33 years and defendants stipulated as to his qualification as a handwriting expert. Comparing signatures known to have been authored by James A. Rasmussen with the signature on Exhibit 5, Mr. Grube testified that the same person did not author the James Rasmussen signature on Exhibit 5 (Tr. Vol. II page 375). Mr. Grube also supplied the basis for his opinion, testifying in great detail on this point (Tr. Vol. II pages 375-381).

To rebut Mr. Grube's testimony, defendants called Edgar Anderson and McKay Anderson, cashiers at the

Bank of Ephraim, to testify that they had witnessed Mr. Rasmussen sign Exhibit 5.

Edgar Anderson admitted that Exhibit 5 could not have been notarized by him on the date that the document shows because he had learned at the prior trial that Mr. Rasmussen had undergone on operation and was confined to a hospital on that date (Tr. Vol. II page 428).

Mr. Anderson admitted that sometimes deeds are prepared and dated and sometimes not signed until later (Tr. Vol. II page 427). But he said he would never back date a deed (Tr. Val. II page 428). Mr. Anderson further admitted that he had no recollection of the particular transaction so that he could say that Mr. or Mrs. Rasmussen were present when he put his acknowledgment on the deed (Tr. Vol. II page 437).

McKay Anderson, who also allegedly witnessed the signature of Mr. and Mrs. Rasmussen at the Rasmussen home admitted that the only way he could remember that he had witnessed Mr. and Mrs. Rasmussen sign Exhibit 5 was because he had been to the Rasmussen home fo rthat purpose on only one occasion (Tr. Vol. II page 443). Nevertheless, the witness was unable to explain whether it was Exhibit 5 which had in fact been witnessed by him at the Rasmussen home or Exhibit 4 which purports to have been witnessed by him one year earlier.

The weight to be given the testimony of Edgar and

McKay Anderson to the effect that they had gone to the Rasmussen home to witness the signatures on the *particular* documents in question is further demonstrated by the fact that Mr. Rasmussen did not return home from the hospital until December 8, 1965. He went into a coma on December 11th and the deed was recorded December 9 by the defendant Wanlass Rasmussen at 2:00 p.m. This necessarily means that if Mr. Rasmussen signed the deed, it was between the time he arrived home in Ephraim on the 8th and before 2:00 p.m. on the 9th — seven or eight days after the deed actually purports to have been signed and notarized. Mr. Anderson admitted, however, that he might have told attorney Udell Jensen in September of 1968 that the deed was signed and notarized at the bank (necessarily on the 8th or 9th) contrary to his testimony on direct examination that the deed was signed at the Rasmussen home (Tr. Vol. II page 431).

The clear testimony of Mr. Grube as to the handwriting of the signature and the unsure and confused testimony of Messrs. Anderson, gave the trial court sufficient grounds to find that the signature was a forgery.

POINT V.

THE TRIAL COURT CORRECTLY HELD THAT THE AUTHOR OF THE SIGNATURE OF JAMES A. RASMUSSEN ON EXHIBITS 16, 17, 18 AND 19 WAS NOT JAMES A. RASMUSSEN.

Exhibits 16, 17, 18 and 19 purport to be two bills of sale and two grazing permits transferring cattle and grazing permits from James A. Rasmussen to the defendant Wanlass Rasmussen and his brother Roger Rasmussen. Roger Rasmussen has refused to accept the purported transfer to himself. Wanlass Rasmussen claims the transfer is valid. The trial court ruled as follows:

> On the 9th or 10th day of December, 1965, two documents entitled Bill of Sale and two documents entitled Waiver of Grazing Preference were purportedly executed by the decedent James A. Rasmussen involving cattle and range permits which he at that time owned. One of said Bills of Sale and Transfer of Grazing Permits was to defendant Ellsworth W. Rasmussen and the other to Roger J. Rasmussen. Notwithstanding said documents appear to bear the signature of James A. Rasmussen, the Court finds that said documents were not in fact executed by the said James A. Rasmussen; that his signature thereon is a forgery; and that therefore said Bills of Sale and Waivers are null and void, and title to said cattle and grazing permits never passed.
>
> The Court further finds in respect thereto that the said Roger J. Rasmussen has never claimed the title to said cattle or grazing permits purported to be transferred to him.
>
> As a consequence of said purported Bill of Sale, defendant Ellsworth W. Rasmussen took possession of 12 head of cattle and one bull on or about the 13th day of December, 1965, which belonged to the said James A. Rasmussen, de-

> ceased, and wrongfully converted the same to his own use (R. 143-144).

To support this contention that the signatures on the grazing permits were valid, defendants called L. R. Burr, a retired automobile dealer in Ephraim, to testify that he had notarized the James Rasmussen signature on these documents. Although Mr. Burr testified that he witnessed the signature he also testified to the contrary.

> Q. I ask you if you have any recollection that his signature was on there, or are you just relying on your custom and practice?
>
> A. I am relying on my custom and practice (Tr. Vol. II page 470).
>
> Q. Do you know whether there were any signatures on the documents before you signed?
>
> A. I don't know if there were or not (Tr. Vol. II page 465).

Moreover, the documents were purportedly signed on December 10, 1965, but Judy Westenskow Lott, a housekeeper who lived in the Rasmussen home during the last illness of James A. Rasmussen, testified that when Mr. Rasmussen returned from the hospital in December of 1965, that he was too ill to sign checks (Tr. Vol. II page 508).

Against the equivocal testimony of Mr. Burr and Mrs. Lott, the trial court heard the testimony of Mr.

Grube (whose qualifications to testify as an expert was stipulated to by defendants) that the signatures on these documents were not authored by the same person who had authored other signatures which were accepted as the genuine signature of James Rasmussen (Tr. Vol. II page 375).

The trial court weighed the credibility of each witness and, contrary to the contention of defendants, the court was not compelled to find the testimony of defendants' witnesses as 100 per cent credible on every point while disregarding plaintiff's testimony. The trial court's finding was correct.

CONCLUSION

The trial court's finding that there existed a confidential relationship between Sarah Rasmussen and her son, the defendant, Wanlass Ellsworth Rasmussen was apparently based *inter alia* upon the following facts: Mrs. Rasmussen's husband became seriously ill in November and December of 1965; she was severely hard of hearing and had failing eyesight; her health was so poor that she was unable to visit her husband in the hospital (Tr. Vol. II page 507); her handwritting was so shaky she usually had to have someone guide her hand; the defendant made out checks for his mother to sign on behalf of his father while he was in the hospital (Tr. Vol. II page 282) and during the illness and hospitalization of her husband, Mrs.

Rasmussen needed help and accepted care from the defendant because he lived next door and she had apparent trust and confidence in him.

Moreover, as soon as Mrs. Rasmussen learned of the purported transfer she repudiated it at a family gathering with the defendant present and also in a written statement (Exhibit 20).

It is plaintiffs' position that the relationship between Sarah E. Rasmussen and her son Wanlass Ellsworth was "such as would lead an ordinary prudent person in the management of his business affairs to repose that degree of confidence in the other person which largely results in the substitution of the will of the latter for that of the former." *Bradbury* v. *Rasmussen*, 16 U. 2d 378, 383, 401 P. 2d 710 (1965).

Based upon this confidential relationship it was defendant's burden to convince the trial court by a preponderence of the evidence that the gifts and conveyances were fair. *Johnson* v. *Johnson*, 9 U. 2d 40, 337 P. 2d 420 (1959). Instead, it is clear that plaintiffs have proved the reverse — that the transactions were not fair.

With respect to the James Rasmussen signature as well as the other evidence, the trial court was in the advantageous position of being present to evaluate the testimony and its credibility. Not only does the record reveal that there is substantial evidence to support the trial

court's ruling, but a review of the record reveals to the reader that the evidence clearly preponderates for the findings made by the court.

Respectfully submitted,

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