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Reuel E. Christensen v. Ellsworth W. Rasmussen : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

REUEL E. CHRISTENSEN (John McAllister Substituted), Administrator 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. 5540

BRIEF OF APPELLANTS

An 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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NATURE OF CASE.

This was a civil action brought by the plaintiff to set aside certain conveyances of real property and over turn certain grazing permit waivers and bills of sale from James A. Rasmussen and Sarah E. Rasmussen, decedents, to the defendants.

DISPOSITION IN LOWER COURT

After a trial on the 6th day of December, 1973, the trial court entered findings of fact and a judgment and decree over turning said grazing permit waivers and bills of sale and setting aside conveyances to certain parcels of real property.

RELIEF SOUGHT ON APPEAL

To set aside the decision of the lower court and find the facts in favor of the defendants and order the judgment and decree heretofore entered by the trial court to be set aside and declared to be of no force or effect.

STATEMENT OF FACTS

On July 9, 1954, the decedent James A. Rasmussen executed a Warranty Deed (Exhibit "6") from himself to Sarah E. Rasmussen. The evidence shows that this Deed was not recorded for some time but was kept by the decedent James A. Rasmussen among his personal papers.

On January 17, 1963, the decedents James A. Rasmussen and Sarah Eda Rasmussen, by Warranty Deed (Exhibit "3"), conveyed ten (10) acres of meadow ground to the defendants, W. Ellsworth Rasmussen and Blanche Rasmussen, husband and wife, as joint tenants and not as tenants in common with right of survivorship in each. This Deed was recorded by the defendants on January 18, 1963.

On the 1st day of December, 1965, the decedents, by Warranty Deed (Exhibit "5"), conveyed 25 acres of meadow

ound to the defendant Ellsworth W. Rasmussen. This Deed as recorded December 9, 1965.

On the 10th day of December, 1965, and because of their iling health and desiring the defendant to have certain properties cause of the care and consideration he had given them, the cedents James A. Rasmussen and Sarah E. Rasmussen livered Exhibit "6" to the defendant Wan Rasmussen. This ed was recorded by the defendant Wan Rasmussen on December , 1965, along with a Warranty Deed (Exhibit "7") from the cedent Sarah E. Rasmussen to W. Ellsworth Rasmussen.

At or around the same time, the decedent James A. smussen, by Waiver of Grazing Preference (Exhibit "19"), nveyed to Ellsworth W. Rasmussen 22 head of grazing permit the Manti-LaSal National Forest and by bill of sale (Exhibit 7") sold to Ellsworth W. Rasmussen 22 head of cattle.

Thereafter on the 13th day of December, 1965, James A. smussen died and there began almost at once a family abble, which has persisted to the present time.

Sarah Eda Rasmussen died on the 29th day of April, 7, and this lawsuit was brought by certain representatives of estates of both decedents to set aside the Deeds, bills of e and waivers to the defendants. Certain other claims were o raised by the plaintiffs which shall not be treated in this f.

STATEMENT OF POINTS

POINT I

THAT THE TRIAL COURT ERRED IN FINDING THAT RE WAS NO DELIVERY OF THE DEED IDENTIFIED AS HIBIT "6" AND PLAINTIFF FAILED TO MEET HIS BURDEN ROVING DELIVERY.

The Deed in question was in fact recorded prior to the n of James A. Rasmussen, the grantor, in the name of Wan nussen, the grantee. In Chamberlain v. Larsen, 83 Ut. 420,

:9 P 2d 355 (1934), the Utah Supreme Court held that a duly executed and acknowledged Deed shown to be in possession of the grantee is self-proving both as to execution and delivery, and ecording of the Deed is likewise evidence of delivery. The Court urther held that an inference of delivery arises from possession of the Deed by the grantee and the recording thereof is entitled to great and controlling weight and can only be overcome by clear and convincing evidence.

The Deed in question was properly recorded. Based on the above holding, a deed that has been recorded is presumed to have been properly delivered. In the instant case, the plaintiff as the burden of showing no delivery. Following the rules of Chamberlain, the burden can be overcome only by clear and convincing evidence. The plaintiffs have produced no evidence at all as to how the deed became in the possession of the defendant and was recorded. The only evidence of how the deed became in the possession of defendant and was subsequently recorded was, the defendants own testimony, wherein he stated that he came into possession when his parents, the grantors, gave him the Deed to be recorded. Clearly, plaintiffs have failed to satisfy their burden of showing non-delivery by clear and convincing evidence.

POINT II

THAT THE EVIDENCE IS NOT SUFFICIENT TO SUSTAIN A FINDING THAT SARAH E. RASMUSSEN DID NOT UNDERSTAND THE NATURE OF THE DEED SHE WAS SIGNING AS EVIDENCED BY EXHIBIT "7".

It first of all should be noted that the plaintiff does not contest the fact that Sarah did sign the Deed. The claim is that she did not understand the nature of her acts. There is absolutely no evidence that she did not understand at the time of the conveyance. All the evidence shows is that at a later time she did not understand that she had conveyed the property or did not remember that she had.

The evidence is further very clear that all her statements
out not conveying came at a time when there was great confusion,
r husband had just died, at a time when other members of her
nily had taken her under their control. There certainly is
dence that her will and mind was dominated by her children
er the death of her husband. In addition, the evidence is very
ar that Sarah was from the time of the conveyance forward in
ling health and certainly in a position to be dominated by her
ldren.

There is further a conflict between what the defendant
n says his Mother had to say about the return of the property
l what the other children said.

Two items of evidence, one the purported conversation
ween the daughter Ruby and Sarah on the day of James A.
mussen's funeral and Exhibit "20" should be commented upon.

The testimony of Ruby is certainly self-serving and was
nout question when no one else was around, thus leaving the
ndant no possible way of contesting what Sarah may have
l, if anything.

Exhibit "20" came at a time when the family was
ending in court that Sarah was not competent (they were
king to have a guardian appointed for her), and it certainly
asier to believe she did not know the nature of Exhibit "20"
the nature of Exhibit "7".

It would, therefore, appear that the evidence when
ed in a light most favorable to the plaintiffs, is not sufficient
ustain a finding that Sarah E. Rasmussen did not understand
nature of the Exhibit "7".

POINT III

THAT THE EVIDENCE IS NOT SUFFICIENT TO SUSTAIN
NDING THAT THE DEED IDENTIFIED AS EXHIBIT "3" WAS
N CONDITIONALLY OR THAT THE SAME WOULD BE
URNED UPON REQUEST OF THE DECEDENT.

Again the burden is upon the plaintiffs to show by clear and convincing evidence that the Deed was given conditionally or with the understanding that Wan would return the same.

The defendant denies this, while he does admit that the conveyance arose out of a Farmers Home Administration transaction he was contemplating. He denies that the transfer was anything but a complete transfer of the land.

Against this we have testimony of Kenneth and Clinton that on separate occasions their Father told them that he wanted Wan to give the land back, but Wan would not do so. This testimony is self-serving and both alleged conversations were without any witnesses to collaborate them.

Much has been made of the fact that James A. Rasmussen retained possession of the property and paid the taxes thereon and that this proves it was a conditional transfer. If that be the case, why did James A. Rasmussen also retain possession of other property he conveyed to other of his children and why would he require Wan to reconvey his ten (10) acres but not require the same of the other children.

POINT IV

THAT THE EVIDENCE IS NOT SUFFICIENT TO SHOW THAT THE SIGNATURE OF JAMES A. RASMUSSEN ON EXHIBIT "5" WAS FORGED OR WAS NOT THAT OF THE DECEDENT.

Plaintiffs' expert Mr. Grube, who was not present at the time Exhibit "5" was signed, testified that in his opinion the signature was not the same as other signatures which had been identified as those of the decedent James A. Rasmussen.

Contrary to this is the testimony of Edgar Anderson and McKay Anderson that they witnessed James A. Rasmussen sign the said Deed. While both Andersons were not clear on much of the detail, they both said James A. Rasmussen signed the deed and neither said they saw Sarah Rasmussen sign for James A., which is what the testimony of Mr. Grube implies.

Again the plaintiffs have failed to show by clear and ɔnvincing evidence that the signature is not that of James A. asmussen.

POINT V

THAT THE EVIDENCE IS NOT SUFFICIENT TO SUSTAIN FINDING THAT THE SIGNATURE OF JAMES A. RASMUSSEN N EXHIBITS "16, 17, 18 and 19" ARE FORGERIES.

Mr. L. R. Burr testified, without contradiction, that mes A. Rasmussen signed the grazing permit waivers 'xhibits "18 and 19"). This was also the testimony of Judy estenskow. Both had acted as witness on these instruments. ırr also testified at the time that he asked James A. Rasmussen ne knew what he was signing and James A. answered yes.

As to the bills of sale (Exhibits "16 and 17"), L. R. rr acted as the notary on the same and his testimony is nilarly without contradiction.

Even the alleged statement of Sarah E. Rasmussen er James A. Rasmussen's death was that they had conveyed cattle and permits.

Against all of this we have only the testimony of Mr. ıbe, who again gave his testimony that in his opinion the natures on the Exhibits "16, 17, 18 and 19" were not the same those known to be James A. Rasmussen's.

It should be noted that the signatures alleged by the intiffs to be forgeries all came at a time when James A. smussen was in failing health and as was further stated by Grube failing health is one of the things which can materially ge a person's signature.

CONCLUSION

One must conclude that the evidence in this case is ıply not sufficient to sustain the findings of the trial court. clearly set forth in Nelson v. Nelson, 513 P 2d 1011, 30 Ut

2d 80, the burden upon the plaintiffs is to prove by clear and convincing proof those facts which would establish the allegations plaintiffs contend for. This burden has not been met.

Defendant respectfully requests that the decision of the trial court be set aside and that trial court be ordered to enter such findings of fact, conclusions of law and decree and judgment as will be consistent with prayer of the defendants herein.

Respectfully submitted,

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