1948

La Var Peterson v. Marriner M. Morrison : Brief of Plaintiff

Utah Supreme Court

Leon Fonnesbeck; Attorney for Plaintiff;

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

LA VAR PETERSON,
Plaintiff and Petitioner,

v.

MARRINER M. MORRISON,
District Judge,
Defendant, and Respondent.

Plaintiff's Brief

LEON FONNESBECK
Attorney for Plaintiff.

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STATEMENT OF FACTS

An Alternative Writ of Mandate was issued out of this court to Marriner M. Morrison, District Judge, August 10, 1948, directing him to "enter judgment in conformity with the judgment of the Supreme Court in the above entitled cause, in case No. 7056, as directed by this court, or that you appear and show cause before this court on the 20th day of August, 1948."

Prior to the issuance of the writ, and after the opinion and mandate to enter judgment as directed in said case had been remitted to the court below, the plaintiffs in said case, with the leave of Judge Morrison, filed a paper entitled "Amendment", a copy of which is marked "Exhibit A" and is attached to the affidavit and Petition herein, and is hereby referred to. The plaintiffs also applied for and the court issued, a Restraining Order and Order to Show Cause, directed to La Var Peterson and the Curlew Irrigation and Reservoir Company, a corporation, and its Secretary, enjoining and restraining La Var from selling, pledging, transferring or in any manner disposing of the 119 shares of stock, which the "Amendment" alleged was "appurtenant" to the SW¼ of the NW¼ of Section 2, T 14 N, R 8 W, S. L. M., and the Irrigation Company was also enjoined and restrained from transferring the said stock upon its books, until after final determination of the new issues raised by the amended pleadings.

La Var and the other defendants in said cause then filed "Demurrer to Purported Amendment and Motion to Dismiss Restraining Order and Order to Show Cause" and "Morton to Strike Purpoited Amendment" and also "Motion that Judgment be Entered as Ordered by the Supreme Court."

These motions were all set for hearing on the law and motion calendar and were duly argued to the court on July 18th. At the conclusion of the argument, Judge Morrison said he would take said

matter under advisement. He further stated that if he granted our Motion that Judgment be Entered as Directed by the Supreme Court that would end and terminate all these matters.

On July 28th I received through the Mail copy of the following order:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF UTAH, BOX ELDER COUNTY

GOLDEN PETERSON, et, al.
Plaintiffs,
vs.
JOHN CHARLES PETERSON, et. al.
Defendants.

} ORDER

Justice and equity demanding, it is ORDERED that defendant's demurrer and Motion to dismiss filed in the above entitled cause be and the same is hereby overruled and denied, and defendant is given 10 days notice to answer or otherwise plead.

MARRINER M. MORRISON,
DISTRICT JUDGE.

July 27, 1948.

Upon receipt of that order I went over and talked to Judge Morrison in his chambers at Logan, and

asked him what he had decided to do about our Motion that Judgment be Entered as Directed by the Supreme Court. He said he thought he would keep the motion pending until after the hearing and final determination of the case on the amended pleadings. I told the Judge that I didn't think he could do that, that I didn't think he had jurisdiction to have any further hearing on said matter, or authority to try any new issues, and I insisted that he either grant or deny our Motion that Judgment be Entered as Directed by the Supreme Court. Judge Morrison then said, "If I deny your motion, you will cite me down to the Supreme Court on mandamus proceedings." I said, "I certainly will, Judge. I don't think you have any other power or authority, except to comply with the mandate of the Supreme Court and enter up judgment as the Supreme Court has di-directed." The Judge said he would think the matter over further and decide what to do about our motion.

A few days thereafter I received in the mail copy of Order denying our motion that Judgment be entered as ordered by the Supreme Court, a copy of which Order is set forth in the Affidavit and Petition herein, marked "Exhibit E", which is hereby referred to and made a part of this statement of facts.

After the time had expired as stated in the Alternative Writ, upon inquiry, I was advised by the Clerk, Mr. Cummings, of the Answer filed by Judge Morrison herein. I then took a copy of the

Affidavit and Petition to Judge Morrison. He said he would mail it to the Attorney General who was his attorney in this matter. After that I received a letter from the Attorney General's Office enclosing copy of Respondent's Answer, and stating that they had forwarded all papers to Attorney J. D. Skeen, who would handle the matter on behalf of Judge Morrison.

In his Answer to the Alternative Writ of Mandate respondent says that "he believes he is justified in whatever action is complained of and that he has a good and legal defense to said writ." He further states that he is not informed of the complaint because no copy of the affidavit was served upon him. As noted above he has now received copy of the Affidavit and Petition, which he has sent to his attorneys.

In the original complaint, filed about six years ago, the plaintiffs asked that Charles Peterson and the other defendants hold four separate tracts of land in trust for plaintiffs. In the first amended complaint they asked that Maria Peterson be adjudged to hold above described premises in trust for plaintiffs. In their second amended complaint they asked that the deed from Maria Peterson to LaVar be adjudged to be null and void, alleging that LaVar was not a bona fide purchaser for value.

Although the trial court found and held that LaVar was a bona fide purchaser for value, this court

in case No. 7056, (being a case in equity) made its own findings, and held that LaVar was not a bona fide purchaser for value, without notice, and therefore found that the prayer of the second amended complaint should be granted, and judgment should be entered that the deed from Maria Peterson to LaVar should be held to be null and void, and Maria should be adjudged to hold the above described premises in trust for plaintiffs, nad remanded the case to the court below with direction to enter up said judgment.

In none of the above pleadings was any water stock ever mentioned or claimed. In the first complaint this 40 acres was only incidental. The main land they apparently started for was the SE¼ of Sec. 12. Now they want to go back and include water stock in an irrigation company as **appurtenant** to the 40 acres. If that stock is appurtenant to that land, why did plaintiffs get out an injunctive writ against LaVar and the Irrigation Company?

ARGUMENT

The one principal question presented to this Court therefore is: Was the Respondent as District Judge, justified in ignoring the mandate of the Supreme Court in case No. 7056 in which this court ordered: "The Judgment is reversed with directions to the trial court to enter judgment in conformity with this opinion."

We submit there is no merit in Respondent's prayer that the Alternative Writ be recalled. Re-

spondent knew and was well versed in all of the facts. The Motion to Enter Up Judgment as Ordered by the Supreme Court was argued before Judge Morrison on two different occasions. The statute does not require any notice to the adverse party before the alternative writ is issued. Section 104-68-5, U.C.A. 1943.

We think the law is well settled that Respondent in case at bar had no jurisdiction or authority to do any other act than that which the court ordered.

> 5 C.J.S. pg 1514, No. 1967,—Generally the lower court has no power, after a cause has been determined on appeal, to vacate or modify the judgment of the appellate court, or its own judgment after affirmance.
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> 5 C.J.S. pg 1521, Amendments, After Final Judgment Rendered or Directed.
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> Ordinarily the trial court has no power to allow the amendment of pleadings after final judgment has been rendered or directed on appeal.
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> 30 ALR 1414, general rule that, when merits of a case are determined on appeal, trial court has no power but to obey judgment of the appellate court.
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> Bancroft's Code Practice and Remedies, Vol. 9, page 9769, No. 7429, Proceedings in Lower

Court Generally — Construction of Mandate. It is the duty of the lower court, when a case is remanded, to comply with the mandate of the appellate court, even though there is error therein. Public interests require that an end shall be put to litigation and if a lower court were authorized to disobey the mandate, litigation would never be ended, and the supreme tribunal of the state would be shorn of that authority over inferior tribunals with which it is invested by fundamental law. A trial court has no jurisdiction except to proceed in accordance with the mandate or remittitur, and any proceedings contrary thereto must be treated as null and void. So where a mandate directs the entry of a particular judgment, it is the duty of the trial court to proceed as directed.

Same source, No. 7430: Amendments and Additional Pleadings.

* * * According to the weight of authority, a trial court may not permit the filing of amended or supplemental pleadings or allow new issues to be framed to try rights already settled, where a cause is reversed and remanded with directions to enter a particular judgment, * * *

Galbreath v. Wallrich, 139 Am. St. Rep. 263, (Colo.): Amendment of the pleadings disallowed after the Supreme Court had reversed the

lower court and ordered judgment in favor of plaintiffs.

Fork, etc., v. Tool Co., 160 U. S. 247, quoting with approval Wadhams v. Gay, 83 Ill. 250: On receipt of the mandate and opinion the trial court was bound to carry into complete effect the decision of this court, not to retry the cause or place the parties in a position by which the cause might be retried. In what a lamentable condition would suitors be if the opinions and final orders of this court are to be disregarded by an inferior court. One of the great interests of the public is that an end shall be put to litigation. The opinion of this court was on merits. The mandate required the trial court to enter judgment in conformity with the opinion of this court, — not a retrial of the case, or the entry of any order which might have that effect. The authorities are clear on this point. Skillers Ex'rs v. Mays Ex'rs, 3 L. Ed. 220, decided by the Supreme Court of the U S.. as early as 1810, is directly on this question and subsequnet cases harmonize with it.

Gloser v. Wonnelley, 193 P. 76 (N.M.). It is well settled that it is the duty of the lower court on remand of a cause to comply with the mandate of the appellate court and to obey the directions therein without variation, even though the mandate may be, or is, supposed to be erroneous. 4 C.J. pg. 1221.

Lumber Co. v. Swartwont, 197 P. 1027, (Idaho), Where the appellate court remands the cause with direction to enter judgment for one of the parties, the judgment of the appellate court is the final judgment in the cause, and the entry thereof in the lower court is a purely ministerial act. 2 RCL 389, (citing many cases) and 3 L.R.A. (N.S.) 715.

3 Am. Jur. page 729: H. Proceedings in trial court after remand. No. 1233. Generally. As pointed out above, the jurisdiction of the court below, which was lost by the court suing out of write of error or by the appeal, is re-acquired when the mandate is filed with it. Further proceedings in the trial court necessary to carry out the mandate are then had. These however, must be in accord with the mandate, and the trial court must therefore ascertain the meaning of the mandate and determine what was decided by the reviewing court in order that it may know what disposition to make of the case. When the mandate orders a specific judgment to be entered, no difficulty or question of construction arises, for there is nothing for the court to do but to enter the judgment directed. . .

No. 1234 .Duty to Comply with Mandate. After a case has been determined by the reviewing court and remanded to the trial court, the duty of the latter is to comply with the

mandate of the former. The mandate of the reviewing court is binding on the lower court and must be strictly followed and carried into effect according to its true intent and meaning, as determined by the directions given by such reviewing court. Public interest requires that litigation shall come to an end speedily, so that when a cause has been tried to judgment, and the merits of a trial determined upon appeal, the trial court upon remittitur, has no power but to obey the judgment of the appellate court. It may, by various methods, be compelled to comply with that mandate; and if it misconstrues the direction of the reviewing court, does not give full effect to its mandate, or enters a judgment or decree which is not in conformity thereto, a new review is appropriate. Proceedings contrary to the mandate must be treated as null and void.

No. 1236. Judgment in Conformity to Mandate. The lower court, upon remand of a case from a higher court, must obey the mandate or remittitur; and render judgment in conformity thereto; it has no authority to enter any judgment not in conformity with the order, or any judgment other than directed or permitted by the reviewing court. Otherwise, litigation would never be ended, and the supreme tribunal of the state would be shorn of authority over inferior tribunals. This is particularly true

when the mandate or remittitur orders the entry of a specific judgment or a particular decree. When the merits of a case are determined on appeal, the trial court has no power but to obey the judgment of the appellate court . . . Where the appellate court remands a cause with directions to enter judgment for the plaintiff in a certain amount, the judgment of the appellate court is a final judgment in the cause and the entry thereof in the lower court is a purely ministerial act. No modification of the judgment so directed can be made, nor may any provision be engrafted on, or taken from, it. That order is conclusive on the parties, and no judgment or order different from, or in addition to, that directed by it can have any effect, even though it may be such as the appellate court ought to have directed.

No. 1237. Alteration, Modification, Amendment, etc., by Trial Court of Mandate. After the reviewing court has determined a case before it and remanded such case to the lower court, the latter is without power to modify, alter, amend, set aside, or in any manner distur or depart from the judgment of the reviewing court, even during the continuance of the term in which it was rendered. The judgment of the higher court is not reviewable in any way by the court below, in the exercise of its equitable powers, or otherwise. The

lower court cannot vary or examine the decree of the higher court for any other purpose than execution; give any other or further relief; review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. It can only proceed to execute the mandate and settle so much as remains to be done, without rescission or modification.

If the lower courts were authorized to disobey the mandate, litigation would never be ended and the supreme tribunal of the state would be shorn of that authority over the inferior tribunal with which it is invested. But the rule has long prevailed that there must be an end to the litigation of a particular cause, and that an alleged injured litigant, in order to establish what he may deem the justice of the cause, may not have, de novo, trial after trial, ad infinitum. The principle that a lower court has no power to alter or amend a judgment after it has been affrmed by a reviewing court and remanded to the lower court is applicable to criminal, as well as to civil, cases . . .

No. 1232. 3 Am. Jur. page 728.: Compelling Obedience to Mandate. When the trial court fails or refuses to obey or give effect to the mandate or remittitur of the reviewing court, misconstrues it, or acts beyond its province in carrying it out, it becomes the province and

duty of the appellate court to enforce compliance therewith. The remedy generally recognized as the proper one is a writ or order of mandamus, but this is not the only remedy; a new appeal may be had, and on such second appeal the court may, instead of remanding the case again, itself proceed to final judgment. In some jurisdictions, compliance with the mandate may also be enforced by contempt proceedings and by a writ of prohibition. Such remedies may be defeated by delay in making application to compel obedience to the mandate.

In conclusion we respectfully submit that any claim or allegation about the water stock, or that said stock is "appurtenant" to the described premises raises new issues of fact not heretofore raised or claimed, which are now precluded as resjudicata. To settle those issues would require a new trial. The plaintiff's fixed the bounds and purpose of their action in their pleading. Neither in their original complaint, nor in their first supplemental complaint, nor in their second supplemental complaint did they mention or make any claim to any water stock, but claimed only the land.

Respectfully submitted,
LEON FONNESBECK,
Attorney for Petitioner.

INDEX TO CASE AND AUTHORITIES