

1997

Lillian Julian v. Carl Petersen, Lenard Petersen,
Arnold Petersen, All Persons Unknown, Claiming
Any Legal or Equitable Right, Title, Estate, Lien, or
Interest in the Property Described in the Complain
Adverse to Plaintiff's Title Thereto, and Does 1
through 20, inclusive : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LILLIAN JULIAN,

Plaintiff and Appellee,

vs.

CARL PETERSEN, LENARD

PETERSEN, ARNOLD PETERSEN,

All Persons Unknown, Claiming

Any Legal or Equitable Right,

Title, Estate, Lien, or

Interest in the Property

Described in the Complaint

Adverse to Plaintiff's Title

Thereto, and Does 1 through

20, inclusive,

Defendants and Appellants.

Appellate Case No. 970496-CA

Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM SUMMARY JUDGMENT

TAKEN FROM THE FOURTH JUDICIAL DISTRICT COURT

FOR UTAH COUNTY, STATE OF UTAH

Judge Steven L. Hansen Presiding

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 970496-CA

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

LILLIAN JULIAN,	:	
	:	
Plaintiff and Appellee,	:	Appellate Case No. 970496-CA
vs.	:	Priority No. 15
CARL PETERSEN, LENARD	:	
PETERSEN, ARNOLD PETERSEN,	:	
All Persons Unknown, Claiming	:	
Any Legal or Equitable Right,	:	
Title, Estate, Lien, or	:	
Interest in the Property	:	
Described in the Complaint	:	
Adverse to Plaintiff's Title	:	
Thereto, and Does 1 through	:	
20, inclusive,	:	
Defendants and Appellants.	:	

BRIEF OF APPELLANT

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FOR UTAH COUNTY, STATE OF UTAH
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PARTIES TO THE PROCEEDINGS
IN THE DISTRICT COURT

The caption of the case on appeal contains the names of all parties to the proceedings in the district court.

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IN THE UTAH COURT OF APPEALS

LILLIAN JULIAN,	:	
	:	
Plaintiff and Appellee,	:	
vs.	:	Appellate Case No. 970496-CA
	:	Priority No. 15
CARL PETERSEN, LENARD	:	
PETERSEN, ARNOLD PETERSEN,	:	
All Persons Unknown, Claiming	:	
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Thereto, and Does 1 through	:	
20, inclusive,	:	
Defendants and Appellants.	:	

JURISDICTION OF THE APPELLATE COURT

The Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(j) (1996). The appeal was transferred to the Court of Appeals from the Utah Supreme Court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented for review are these:

1. Does the 1969 quit claim deed from Lillian Julian to Joseph Theron Corbridge remain valid when Mr. Corbridge's wife is added as an additional grantee, with Mr. Corbridge's knowledge and consent, but without the knowledge and consent of Ms. Julian?

Standard of Review

The standard of review on an appeal from the granting of a motion for summary judgment is that no deference is given to the trial court's conclusions, which are reviewed for correctness. Kunz & Co. v. State, 913 P.2d 765, 768 (Ut. Ct. App. 1996) ("As is the case whenever we consider an appeal from a summary judgment, we review the trial court's legal conclusions, including its conclusion that the material facts are not disputed, for correctness. See Utah R.Civ.P. 56(c) (stating that summary judgment is appropriate only if 'there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law'). This standard allows us to make our own conclusions and does not obligate us to defer to the trial court.") (citation omitted).

The party against whom summary judgment is rendered is entitled to all reasonable inferences that may be drawn from the facts. McNair v. Farris, 944 P.2 392, 393 (Ut. Ct. App. 1997) ("we note that in reviewing a grant of summary judgment, we view the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.").

STATUTES AND RULES WHOSE INTERPRETATION IS OF CENTRAL IMPORTANCE TO THE APPEAL

Application of § 57-1-13 of the Utah Code Annotated (1994 Replacement) may assist in the determination of this appeal. It states, in relevant part: "Such deed [quit claim deed], when executed as required by law shall have the effect of a conveyance

of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance."

STATEMENT OF THE CASE

Nature of the Case

This is a quiet title action brought by Lillian Julian to quiet title to property in Utah County in her, and against the heirs of LaRetta Corbridge, the late wife of Joseph Theron Corbridge, who is also deceased.

Course of Proceedings

Ms. Julian filed her complaint September 23, 1996. R.1-5. The Peterson brothers filed their answer November 12, 1996. R.6-7.

Ms. Julian filed a motion for summary judgment December 10, 1996. R.8-9. A hearing on the motion was heard by the Fourth District Court, the Honorable Steven L. Hansen presiding, on February 18, 1997. R.46. The Court issued an order granting the motion for summary judgment on May 9, 1997. R.57-62.

The Peterson brothers filed a Notice of Appeal on June 6, 1997. R.63-64. The case subsequently was poured-over to the Court of Appeals. R.68.

STATEMENT OF FACTS

1. In the 1960's Ms. Julian and her brother, Joseph Theron Corbridge, were joints tenants of the subject property described in paragraph 6 of the complaint. R.4,19.

2. On January 17, 1969, Ms. Julian executed a quit claim deed in favor of Mr. Corbridge. R.21,25.

3. The quit claim deed was recorded September 15, 1980. R.21.

4. Between the date of its execution and the date of its recording, the quit claim deed was altered to reflect LaRetta H. Corbridge, the wife of Mr. Corbridge, as an additional grantee. R.21,25.

5. The addition of LaRetta H. Corbridge was made without the knowledge of Ms. Julian. R.25.

6. Mr. Corbridge executed and caused to be recorded an Affidavit in September of 1995, declaring that "LaRetta H. Corbridge died in Phoenix, State of Arizona, on January 9, 1988, and she is the same LaRetta H. Corbridge as is named in the Quit-Claim Deed recorded in the Utah County Recorder's Office wherein Joseph Theon Corbridge and LaRetta H. Corbridge are named as Grantees" R.27-28.

7. At the same time as the Affidavit, Mr. Corbridge executed and recorded a quit claim deed to himself and Ms. Julian, as joint tenants. Mr. Corbridge died a little over three months later. R.20.

8. Mr. and Mrs. Corbridge occupied the house on the property. Mrs. Corbridge died in 1988 and Mr. Corbridge died in January of 1996. R.3.

SUMMARY OF ARGUMENT

The sons of LaRetta Corbridge have an ownership interest in the real property, pursuant to the combination of the 1969 quit claim deed and the 1995 Affidavit of Mr. Corbridge. The alteration of the quit claim deed was made after Ms. Julian had fully quit claimed her interest in the property to her brother. The alteration was made with Mr. Corbridge's knowledge and consent, as reflected in the 1995 Affidavit.

ARGUMENT

The Combination of the 1969 Deed and the 1995 Affidavit Serve as a Valid Conveyance of a Co-Tenancy Interest to Mrs. Corbridge by Mr. Corbridge

Given the unavailability of Mr. and Mrs. Corbridge, the following facts can be reasonably inferred from the available documentary evidence. Mr. Corbridge intended to convey an interest in the real property to his wife. He allowed the quit claim deed to be altered and recorded with the alteration. The 1995 Affidavit executed and recorded by Mr. Corbridge just prior to his death acknowledges the validity of the 1969 Deed from plaintiff to Mr. Corbridge and his wife. In the 1995 Affidavit Mr. Corbridge specifically identifies his late wife, LaRetta H. Corbridge, as the person "named in the Quit-Claim Deed recorded in the Utah County Recorder's Office wherein Joseph Theron

Corbridge and LaRetta H. Corbridge are named as Grantees” Had Mr. Corbridge not agreed to the addition of his wife as a co-tenant he would not have executed and recorded the 1995 Affidavit acknowledging her ownership interest. The added language to the 1969 Deed is the written evidence of the interest he intended to convey to his wife. The 1995 Affidavit is an open acknowledgment that the conveyance was knowingly and deliberately made by him to Mrs. Corbridge.

The Conveyance to Mrs. Corbridge Satisfies the Statute of Frauds

This is not a case in which the only instrument by which a conveyance of real property is made is the altered quit claim deed. Most courts note that when a grantee is added by another grantee to a deed, the attempted conveyance fails due to the Statute of Frauds. (The grantee having failed to execute the instrument by which he or she intends to make the secondary conveyance.) See, e.g., Perkins v. Kerby, 308 So. 2d 914 (Miss. 1975). In this case, Mr. Corbridge did indeed execute and record an instrument by which he acknowledged the interest of his wife in the property, the 1995 Affidavit.

The 1969 Deed Is Not Void

The trial court erred in declaring the 1969 Deed void. It is well established that “the subsequent alteration of an instrument under and by virtue of which the title to property has become vested in the grantee does not invalidate the instrument insofar as it operates as a conveyance, and therefore does not in

any way affect the title of such grantee to the property so conveyed." ALTERATION OF INSTRUMENTS, 4 Am. Jur. 2d § 31. Ms. Julian conveyed her entire right, title and interest in the property to Mr. Corbridge in 1969, with the valid delivery of the executed deed to him. Utah Code Ann. § 57-1-13 (1994 Replacement).

"A conveyance is valid upon delivery of a deed with present intent to transfer." Crowther v. Mower, 876 P.2d 876, 879 (Ut. Ct. App. 1994).

Ms. Julian is Estopped From Contesting the Validity of the Conveyance

By her own Affidavit, Ms. Julian indicates that she intended by the "unaltered" deed to quit claim her interest in the real property to Joseph Theron Corbridge. Plaintiff had no continuing interest in the property once the deed was delivered to Mr. Corbridge, even though not recorded until much later. Mr. Corbridge altered the deed (or allowed it to be altered), as evidenced by his Affidavit of 1995, to add defendants' mother, his wife. Mr. Corbridge, having sole ownership interest in the property following delivery of the deed from plaintiff to him, is the only person with a continuing interest who could complain as to the addition of a grantee. "[W]hen the parties affected by a change in an instrument do not complain of it, others not party to the instruction or **affected by the change** cannot ordinarily set up the change" ALTERATION OF INSTRUMENTS, 4 Am. Jur. 2d § 64. Ms. Julian, who had no continuing interest in the

property following the execution and delivery of the quit claim deed, was unaffected by the alteration of the deed until she re-acquired an interest in a transaction that can only be called a testamentary transfer -- the execution and recorded of a quit claim deed within months of Mr. Corbridge's death.

In a similar situation, the Supreme Court of Wyoming noted that the alteration of a deed was effective against the heirs of the deceased, who were estopped from contesting the wife's interest in the real property. In Hundley v. Neely, 365 P.2d 196 (Wyo. 1961), there was a dispute as to when a deed had been altered to add the wife as a joint tenant. The Court noted that "even if Hart did add his wife's name or cause it be added, after rather than before execution and delivery of the deed, his heirs and representatives would probably be estopped from contesting [it]." Id. at 197.

Ms. Julian's renewed ownership interest in the real property only comes through Mr. Corbridge's act of naming her a joint tenant just prior to his death. As such, she should be estopped from contesting the validity of his prior act of naming his wife as a co-tenant on the property and of acknowledging that fact in a later recorded instrument.

The Trial Court's Reliance on Burnham v. Eschler is Misplaced

This case is not the hypothetical situation posited by the Utah Supreme Court in Burnham v. Eschler, 208 P.2d 96 (Utah 1949), and quoted by the trial court in its Order. No information

was added to the 1969 Deed by "a party who never legally obtained possession of the instrument . . ." Id. at 97. Mr. Corbridge obtained the deed by valid delivery from Ms. Julian. He thereafter caused the additional grantee to be added, after he had full and sole ownership of the property.

CONCLUSION

The combination of the 1969 Deed and the 1995 Affidavit are the deed of Mr. Corbridge's interest to him and his wife as co-tenants. The trial court erred in granting the motion for summary judgment. The order of the trial court should be reversed.

DATED: January 2, 1998.

ROBINSON & SHEEN, L.L.C.

By _____
E. Jay Sheen
Attorneys for the Petersons
Appellants

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 1998, two copies of
Brief of Appellant were mailed to:

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8 North Center Street
American Fork, UT 84003

Pursuant to Rule 24(a)(11) of the Utah Rules of Appellate Procedure, no addendum to Appellant's Brief is necessary.