

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 Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LILLIAN JULIAN,

Plaintiff-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-Appellants.

Appellate Case No. 970496-CA

Priority No. 15

BRIEF OF APPELLEE

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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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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JURISDICTION

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

DETERMINATIVE STATUTES AND RULES

Statutes which may be relevant to this **appeal** include Utah Code Ann. § 57-1-5 (1997 supp.), regarding the creation of tenancy in common and joint tenancy interests in real estate, and Utah Code Ann. § 57-1-13 (1994 replacement), regarding the legal effect of a quit claim deed.

SUMMARY OF ARGUMENT

The alteration of the 1969 quit claim deed from Plaintiff Lillian Julian to her **brother**, Joseph Theron Corbridge, to include Joseph's wife LaRetta H. Corbridge without Lillian's knowledge or consent renders the deed null and void, inasmuch as the addition of LaRetta as an

additional grantee did not reflect Lillian's intent, as grantor. Therefore, as the sole survivor in the joint tenancy between Lillian and Joseph, Plaintiff Lillian Julian is the owner in fee simple of the subject property and Defendants, LaRetta's sons, have no right, title, or interest in the subject property.

In the alternative, if the 1969 quit claim deed is found effective as a conveyance to Joseph, under the facts of this case no conveyance was made to Defendants' mother, LaRetta, and Plaintiff Lillian Julian re-acquired title to the property upon Joseph's death, pursuant to a quit claim deed executed by Joseph on September 29, 1995 naming himself and Plaintiff Lillian Julian as joint tenants.

ARGUMENT

The Trial Court Was Correct in Its Reliance on *Burnham v. Eschler*

In *Burnham v. Eschler*, 208 P.2d 96 (Utah 1949), the Utah Supreme Court held that, "if the name of a grantee is inserted by a party who never legally obtained possession of the instrument *nor obtained authority from the grantor* to complete the instrument no deed comes into existence." Id. at 97 (emphasis added). Defendants claim the trial court erred in relying on the case of *Burnham v. Eschler*, 208 P.2d 96 (Utah 1949), arguing that because Joseph legally obtained possession of the 1969 quit claim deed, his subsequent action in causing LaRetta's name to be placed on the 1969 quit claim deed as an additional grantee was legal and valid. This argument ignores the second part of the Court's holding, that no deed comes into existence when the name of a grantee is inserted by a party who never obtained authority from the grantor to complete the instrument.

In the instant case, the Court is not reviewing a situation where an incomplete deed was subsequently completed. The 1969 quit claim deed was already “complete” because the grantor, Plaintiff Lillian Julian, had inserted Joseph’s name as sole grantee. Lillian’s intent in executing the quit claim deed was clear. At the time the deed was delivered, there was no question as to the grantor’s intent. The deed was already complete and in accordance with the grantor’s wishes and intent. No one, including Joseph, had Lillian’s authority to take action to further “complete” the instrument by adding any other name to the quit claim deed as a further grantee.

If Joseph wished to convey some portion of his interest in the subject property to LaRetta, as grantee under the 1969 quit claim deed, he had the right to do so. However, in order to avoid clouding the title to the property, the proper way to convey an interest to LaRetta would have been for Joseph to execute a separate instrument, as grantor, naming himself and LaRetta as grantees. Assuming it was in fact Joseph who altered the 1969 deed, any such attempt to convey a portion of his interest in the subject property to LaRetta by altering the instrument through which he obtained his interest violates basic principles of property law which seek to enforce the grantor’s, not the grantee’s, intent and, as is evidenced by this case, made it increasingly difficult to establish a clear title to real property. The trial court’s decision acknowledges the importance of preserving established principles of property law, and should therefore be affirmed.

Plaintiff is Not Estopped From Contesting the Validity of the Conveyance

“As a general rule, only the parties to an instrument, or those claiming under them, have the right to complain of an alteration to it.” ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 64. As grantor under the 1969 deed, Plaintiff Lillian Julian is certainly a party to that instrument. The

alteration to the 1969 deed was one that did not conform to Lillian's intent, and therefore she was affected by the alteration.

Let us assume, for purposes of this argument, that Joseph himself altered the 1969 deed or caused it to be altered at his direction. Had Joseph chosen, upon his acquisition of Lillian's interest, to follow established principles of property law when attempting to convey an interest in the subject property to LaRetta, Plaintiff would indeed have had no standing to contest the validity of such a conveyance. However, such is not the case now before the Court. Instead, such alteration constituted merely an attempt to convey an interest in the subject property to LaRetta by altering the 1969 deed itself and by executing the 1995 Affidavit to "acknowledge the interest of his wife in the property." Brief of Appellant at 6.

The alteration of the 1969 deed executed by Plaintiff as grantor affected an instrument to which Plaintiff was a party and materially changed the terms of the instrument, and thereby failed to accomplish the conveyance as intended by Plaintiff. Therefore, Plaintiff does have standing to contest the validity of the attempted conveyance to LaRetta.

The Wyoming case of Hundley v. Neely, 365 P.2d 196 (Wyo. 1961) is raised by Defendants in their brief to support their argument that Plaintiff is estopped from contesting the validity of the conveyance. The Hundley court held that when a grantee inserted his wife's name as co-grantee with right of survivorship, the grantee and his heirs and representatives "would probably be estopped from contesting [the wife's] right of survivorship. At least it was so held in Simmons v. Simmons, 203 Ark. 566, 158 S.W.2d 42, 44-45." Id. at 197. In Simmons, a case with facts similar to the Hundley case, the Arkansas Supreme Court held that the alteration of the

deed in question did not destroy the conveyance to the original grantee, but estopped him and his heirs from asserting that the co-grantee was not a joint grantee. Simmons, 158 S.W.2d at 45.

There are several facts which distinguish the instant case from the Hundley and Simmons cases. First, the courts in both of those cases concluded that the alteration was made by the grantee himself or at his direction. See Hundley, 365 P.2d at 197; Simmons, 158 S.W.2d at 44-45. Second, Defendants argue that Plaintiff Lillian Julian was unaffected by the alteration of the 1969 deed until she re-acquired an interest when Joseph executed a quit claim deed naming himself and Lillian as joint tenants several months prior to his death. Defendants categorize this as a testamentary transfer, and argue that Lillian is therefore an heir to Joseph estopped from contesting the validity of LaRetta's interest in the subject property.

In the instant case, the only evidence that LaRetta's name was added to the 1969 quit claim deed by Joseph Theron Corbridge or at his direction is the 1995 Affidavit. That document merely states that the LaRetta H. Corbridge who died in Phoenix, Arizona on January 9, 1988 was the same LaRetta H. Corbridge who was 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.¹ Unlike the grantees in Hundley and Simmons, there is no evidence of any affirmative statement by Joseph that he intended to make LaRetta a co-grantee under the 1969 deed. The 1995 Affidavit merely acknowledges that LaRetta's name appears on the 1969 deed, and makes no representations whatsoever that Joseph caused that alteration.

¹The 1995 Affidavit correctly identifies the entry number of the 1969 quit claim deed as entry number 31635, but incorrectly states the date of recordation as being September 15, 1969. The deed was executed on January 17, 1969 and recorded on September 15, 1980.

An examination of the 1969 deed reveals information that suggests the deed may in fact have been altered by LaRetta herself. In the left margin next to the word “grantee” are the initials “L.H.C.” which quite likely stand for “LaRetta H. Corbridge.” These initials appear to be written in the same handwriting as the words “or LaRetta H. Corbridge” inserted after Joseph’s name, and in a different handwriting than that used by Joseph Theron Corbridge to sign the 1995 Affidavit. Furthermore, the deed was recorded at the request of LaRetta H. Corbridge.

If the 1969 deed was altered by LaRetta and not by Joseph as grantee, and lacking evidence that Joseph intended to make LaRetta a co-grantee under the 1969 deed, Joseph and his heirs and representatives would not be estopped from contesting LaRetta’s interest in the subject property.

As to the Defendants’ argument that Plaintiff Lillian Julian is an heir of Joseph Theron Corbridge and thereby estopped from contesting the validity of the conveyance, this argument is irrelevant lacking any evidence that Joseph, intending to convey to LaRetta some interest in the subject property, altered the 1969 deed or caused it to be altered. However, even if the Court finds that the alteration was done by Joseph or at his direction and that he intended to convey an interest to LaRetta, and that Lillian is an heir of Joseph’s who is thereby estopped from contesting the conveyance, there remains another factor distinguishing the instant case from the Hundley and Simmons cases. Neither Hundley nor Simmons involved a situation where one of the grantee’s heirs had been the grantor in the altered deed. Here, Lillian was the grantor in the 1969 quit claim deed, and inasmuch as there exists a question as to the validity of that conveyance, she should not be estopped from contesting its validity because she might be considered one of Joseph’s heirs.

For these reasons, Plaintiff Lillian Julian is not estopped from contesting the validity of the conveyance to LaRetta H. Corbridge of any interest in the subject property.

The Addition of LaRetta Corbridge's Name as a Co-Grantee to the 1969 Deed is a Material Alteration Which Renders the Deed Null and Void

Although there is no previous case law in Utah directly on point, case law from other jurisdictions establishes that alteration of the identity of the grantee on a deed, without the knowledge or consent of the grantor, renders the deed void. See Perkins v. Kerby, 308 So.2d 914 (Miss. 1975) (husband's alteration of deeds naming him sole grantee to add wife as grantee by writing her name and words "estate by the entirety" after his name as grantee, without knowledge or consent of grantor, was a nullity totally ineffective to convey title by entirety or any title whatsoever to wife); Sandlin v. Henry, 69 P.2d 332 (Okla. 1937) (alteration of deed, after execution and delivery, without the knowledge and consent of the grantor, by changing the name of the grantee to that of plaintiff, renders the deed void); Estep v. Croll, 68 P.2d 31 (Colo. 1937) (where grantee named in deed caused his name to be erased and that of another written in, without knowledge or consent of grantor, deed was void because of alteration).

The addition of parties to an instrument is generally a material alteration. See Sandlin, 68 P.2d at 333. See also ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 43. Likewise, "an alteration to the name of a grantee in a deed which changes his or her identity or character" is also material. See ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 44.

[A]ny material alteration of a written instrument, after its execution, intentionally made or caused to be made directly or indirectly by the owner or holder of it, . . . without the consent of the party sought to

be charged on the instrument, renders the instrument void as between such nonconsenting party and the person responsible for the alteration, or those claiming through the responsible party.

ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 10. See also ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 28 (unauthorized material alteration of written instrument by party thereto, or holder thereof, voids the instrument and the person responsible for alteration may not recover upon it as altered, nor may anyone claiming through the altering party, even in accordance with its original tenor).

Plaintiff Lillian Julian, as grantor under the 1969 quit claim deed, intended to convey her interest in the subject property solely to her brother, Joseph Theron Corbridge. The evidence clearly indicates that Lillian did not intend to convey the property to both Joseph and his wife, LaRetta. Had that been Lillian's intent, she could easily have included LaRetta's name with Joseph's on the deed as co-grantees at the time the deed was executed. Inasmuch as the deed was complete and manifested Lillian's intent at the time of its delivery to Joseph, any subsequent alteration, if made by Joseph, rendered the 1969 quit claim deed void in its entirety. In the alternative, if the alteration was made by LaRetta or any other person, the 1969 deed is void as to LaRetta or anyone claiming under her.

Defendants cite ALTERATION OF INSTRUMENTS, 4 Am. Jur.2d § 31, which states as follows:

The general rule is that the subsequent alteration of an instrument under and by virtue of which the title to property has become vested in the grantee therein 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.

Should this Court determine that title to the subject property was vested in Joseph pursuant to the 1969 deed prior to its alteration to include LaRetta's name as a co-grantee, the attempted conveyance to LaRetta still fails due to the Statute of Frauds. See, e.g., Perkins v. Kerby, 308 So.2d 914, 916 (Miss. 1975). Therefore, Joseph retained sole interest in the subject property until September 29, 1995, when he executed a quit-claim deed conveying that interest to himself and Plaintiff Lillian Julian as joint tenants. R. 20. Upon Joseph's death in January 1996, Plaintiff acquired Joseph's interest in the subject property by rights of survivorship and Defendants therefore have no right, claim or interest in the property.

No Co-Tenancy Interest Was Conveyed to LaRetta Corbridge

Because the 1969 quit claim deed was rendered void by its unauthorized alteration, the joint tenancy interest in the subject property enjoyed by Plaintiff Lillian Julian and her brother Joseph was not severed and no interest was conveyed to either Joseph or to LaRetta Corbridge by Lillian, as grantor. Since Joseph never acquired Lillian's interest in the subject property, any attempt he may have made to convey an interest in the property to LaRetta was ineffective.

Even if the Court determines that Joseph did acquire Lillian's interest in the subject property, no interest was conveyed to LaRetta. Defendants cite the case of Perkins v. Kerby, 308 So.2d 914 (Miss. 1975) as support for their argument that the 1995 Affidavit serves to complete conveyance by Joseph, as grantor, of some interest to LaRetta. That case involves a grantee, Perkins, who altered deeds to include his wife as a joint tenant. The Mississippi Supreme Court held that the alterations constituted "a nullity totally ineffective to convey title by the entirety, or any title whatsoever." Id. at 916 (citations omitted). The Perkins court went on to state that

“[m]oreover, the alteration was inoperative under the statute of frauds inasmuch as it was not signed by Perkins if he thereby sought to convey title by the added words.” Id.


In the instant case, Defendants argue that because Joseph’s subsequent execution and recording of the 1995 Affidavit acknowledges that LaRetta is named as a grantee in the 1969 quit claim deed, the Statute of Frauds requirement is satisfied. However, the 1995 Affidavit is not itself a conveyance. Given the lack of evidence demonstrating that the alteration to the 1969 deed was made by Joseph himself or at his direction, and the very real possibility that the 1995 Affidavit was executed by Joseph at his attorney’s instructions in an attempt to merely clear title to the subject property, the two instruments taken together do not create a clear and indisputable conveyance from Joseph to LaRetta. It is a basic principle of property law that, if a person “holds the fee and desires to reduce the quantum of his estate, the proper mode of doing this is to convey to another reserving to himself the estate that he desires to hold.” DEEDS, 23 Am. Jur.2d § 27. Inasmuch as Joseph failed to comply with this established method of conveyance, the altered 1969 deed and the 1995 Affidavit should not be construed as a conveyance to LaRetta of some portion of his interest.

Nothing plus nothing equals nothing. If these two ineffective attempts to convey an interest in real property are combined, they still equal an ineffective attempt to convey an interest in real property. For these reasons, no co-tenancy interest was ever effectively conveyed to LaRetta Corbridge under which Defendants may claim an interest to the subject property.

CONCLUSION

No interest in the subject property was conveyed to LaRetta H. Corbridge. Accordingly, Defendants have no claim or title in the subject property and the trial court's decision in granting the motion for summary judgment should be affirmed.

DATED this 29 day of January, 1998.


STANLEY R. SMITH
Attorney for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the ³29 day of ^{Feb.}~~January~~, 1998, I caused two true and correct copies of the foregoing Brief of Appellee to be mailed by first-class mail, postage prepaid, to the following:

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