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 : Reply Brief

Utah Court of Appeals

E. Jay Sheen; Robinson & Sheen; attorneys for appellants.
Stanley R. Smith; attorneys for appellee.

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

REPLY 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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ARGUMENT

The Controlling Precedent is *Hanson v. Beehive Security Co.* -- Not *Burnham v. Eschler*

Ms. Julian's assertions that the dicta in Burnham v. Eschler, 208 P.2d 96 (Utah 1949) is determinative of the issues in this case, and that "there is no previous case law in Utah directly on point" are inaccurate. In Hanson v. Beehive Security Co., 380 P.2d 66 (Utah 1963), the Utah Supreme Court faced a situation strikingly similar to the present action. Hanson executed 10 deeds, five showing Bonneville Securities as the grantee and 5 executed in blank. Bonneville Securities thereafter filled in the name of Willard J. Stringer as the grantee on one of the deeds. Hanson contested Bonneville's

action in making the grantee of the one of the deeds Mr. Stringer.

The Utah Supreme Court held the deed a valid conveyance, noting:

> Here the plaintiffs Hanson had executed and acknowledged the deed and it was complete in every particular except the blank for the name of the grantee, in which they understood the name of Bonneville Securities, Inc. was to be filled it. Their admitted intention in signing was to divest themselves of ownership of the property and that it be delivered to that grantee. It must be conceded that if the deed had been filled in as they intended, they would have been bound by it. Then if Bonneville had in turn immediately made its deed to the Stringers, and the transaction had proceeded as it did, Hansons would have been remediless against Beehive. We can see no material difference in the plaintiffs' position because the intermediate step of deeding the property to Bonneville was omitted and the names of the Stringers were filled in as grantees.

Id. at 68 (emphasis added).

A very similar action was taken by Mr. Corbridge in the present action. Instead of recording the original quit claim deed, he authorized the insertion of his wife's name as a co-owner of the property. He simply avoided the "intermediate step," as the Utah Supreme Court described it in Hanson, of recorded the quit claim deed from his sister to him, and then executing and recording a deed by which he granted his wife an ownership interest.

It is undisputed that Ms. Julian quit claimed her entire interest in the property to her brother in 1969 by executing and

delivering the deed to him. She had no further interest in the property thereafter.

It is undisputed that Mr. Corbridge specifically and openly acknowledged the deed as it was recorded, i.e., with the inclusion of his wife as an additional owner of the property. If Mr. Corbridge contested the altered deed's validity, it seems self-evident that the Affidavit would have contained language to that effect, instead of (or in addition to) the following:

> 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 THERON CORBRIDGE and LaRETTA H. CORBRIDGE are named as Grantees, ...

It appears from the face of the Affidavit that Mr. Corbridge was assisted by counsel in preparing, executing and recording the Affidavit. Note the recording information in the upper right hand of the first page: "RECORDED FOR DUVAL HANSEN WITT & MORLEY." Since the altered deed is specifically referred to in the Affidavit, by entry number, it can be reasonably assumed that Mr. Corbridge and/or counsel saw the deed. The alteration is apparent on the face of the deed. Yet, rather than disavow or contest the alteration, Mr. Corbridge executed an Affidavit acknowledging Mrs. Corbridge, his late wife, as a named grantee.

Hanson is directly on point and provides the only applicable Utah precedent for purposes of this appeal. Furthermore, the Court in Hanson specifically limited the scope of Burnham v. Eschler, noting that the language quoted by Ms. Julian in her

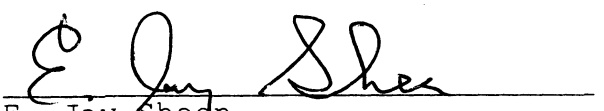
brief is "by way of dicta" and further noting that the "deeds in question therein were actually held to be valid." Hanson at 68.

CONCLUSION

Utah law does not require Mr. Corbridge to create a new deed to add his wife as an additional owner of the real property. Mr. Corbridge's recorded Affidavit makes clear that the inclusion of his wife as an additional owner of the property was known, acknowledged and agreed to by him. The defendants, natural children of Mrs. Corbridge and step children of Mr. Corbridge, have an interest in the real property in question through their mother pursuant to the intestacy laws. The trial court erred in granting the motion for summary judgment. The order of the trial court should be reversed.

DATED: March 5, 1998.

ROBINSON & SHEEN, L.L.C.

By 

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 1998, two copies of Reply Brief of Appellant were mailed to:

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