

1986

William D. Blodgett and Florence G. Blodgett, his wife v. Zions First National Bank, Stanley L. Pace and Allan D. McComb, individually and d/b/a Alco Investment, and Does 1-10 : Reply Brief

Utah Supreme Court

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Robert M. Dyer; Lester A. Perry; James S. Cassity; M. Karlynn Hinman; Kirton, McConkie & Bushnell; Attorneys for Respondents.

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DOCKET NO. 860178-CA

IN THE SUPREME COURT
FOR THE STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT,
his wife,

Plaintiffs-Respondents,

vs.

ZIONS FIRST NATIONAL BANK,
STANLEY L. PACE and ALLAN
D. McCOMB, individually and
d/b/a ALCO INVESTMENT, and
DOES 1 - 10,

Defendants-Appellants.

Case No. 860115

Category No. 13(b)

860178-CA

REPLY BRIEF OF APPELLANTS PACE AND McCOMB

APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE JAMES S. SAWAYA, JUDGE

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OCT 22 1986

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IN THE SUPREME COURT
FOR THE STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT,)	
his wife,)	
Plaintiffs-Respondents,)	Case No. 860115
vs.)	
ZIONS FIRST NATIONAL BANK,)	
STANLEY L. PACE and ALLAN)	
D. McCOMB, individually and)	
d/b/a ALCO INVESTMENT, and)	
DOES 1 - 10,)	
Defendants-Appellants.)	

REPLY BRIEF OF APPELLANTS PACE AND McCOMB
RESPONSE TO THE BLODGETTS' MOTION
TO TAKE JUDICIAL NOTICE

As a basis for their argument in this case, the Blodgetts ask this court to take judicial notice of the court files in two consolidated actions commenced by the Blodgetts in the 1970's against Betty Pursell and other defendants. The consolidated cases were dismissed with prejudice by Judge Baldwin in May, 1980. Pace and McComb have no objection to such motion in regard to documents in the consolidated cases if this court also takes notice of related documents filed in those cases which documents are directly adverse to the

Blodgetts' current position. Pace and McComb object to the Blodgetts' motion to take notice of a 1986 letter from an attorney on the primary ground that such is not a proper subject for judicial notice and is at best an improper attempt to contradict the filed notice that Pace and McComb are the assignees for value of the Zions' judgments. (See R. 47-48). The additional documents contained in the consolidated cases which documents should also be noticed by this court are identified in the following paragraphs. Copies are included in the addendum.

1. As support for their present argument, the Blodgetts cite in their brief the somewhat indefinite oral stipulation of December, 1979 in the consolidated cases but then for some unexplained reason neglect to mention that some three months after the indefinite oral stipulation, the Blodgetts' counsel prepared, signed and filed a written stipulation in the consolidated cases in March, 1980 which written stipulation agreed on a dismissal with prejudice but did not provide for quieting title to the property in the Blodgetts. The written stipulation is the basis for Judge Baldwin's order of May, 1980 dismissing the consolidated cases with prejudice and without quieting title. Like the written stipulation, Judge Baldwin's order was also prepared by counsel for the Blodgetts. Copies

of the 1980 written stipulation (A) and order (B) are included in the addendum to this brief and identified by the noted letter symbols.

2. After the appeal in this present case was filed in February, 1986, the Blodgetts filed a motion with Judge Dee in March, 1986 in the consolidated cases and like their failure to disclose the written stipulation to this court, their motion and memorandum to Judge Dee did not mention the written stipulation but on the basis of the oral stipulation only asked Judge Dee under Rule 60(b) to set aside the order of dismissal by Judge Baldwin in May, 1980 and grant a judgment of quiet title. It should also be noted that contrary to their memorandum to Judge Dee, which cites Rule 60(b), the Blodgetts' brief to this court states on page 16 that their March, 1986 motion to Judge Dee was "to correct a clerical error." Copies of the Blodgetts' motion (C) and memorandum of points and authorities (D) in support thereof citing Rule 60(b) to Judge Dee are in the addendum.

3. In regard to their March, 1986 motion to Judge Dee in the consolidated cases to set aside Judge Baldwin's order and to grant a judgment of quiet title, the Blodgetts served Betty Pursell, who lives in Idaho, with their notice, motion and memorandum but did not serve Betty Pursell with a notice to appoint a successor legal counsel or appear in

person as required by §78-51-36 U.C.A. (1953). A copy of Betty Pursell's affidavit (E) stating that she did not realize she should appear personally is in the addendum. Counsel for the Blodgetts was informed that Betty Pursell's counsel in the consolidated cases was no longer representing her. A copy of the affidavit of the Blodgetts' counsel (F) stating such knowledge is in the addendum.

4. In May, 1986 when Betty Pursell did not appear, either in person or by counsel, Judge Dee granted the Blodgetts' motion to set aside the 1980 order and quiet title in the Blodgetts. The May, 1986 order signed by Judge Dee was prepared by the Blodgetts' counsel. A copy of Judge Dee's May, 1986 order (G) setting aside Judge Baldwin's 1980 order is in the addendum. The May, 1986 order differs in a number of substantive particulars from a later amended order prepared by the Blodgetts' counsel and signed by Judge Dee as stated in the next paragraph. For some unexplained reason, Judge Dee's May, 1986 order is also not mentioned in the Blodgetts' brief in this case.

5. Therafter in August, 1986, the Blodgetts obtained an amended order from Judge Dee in the consolidated cases without filing a written motion for or giving notice of such amendment. A copy of Judge Dee's amended order (H) of August, 1986 is in the addendum. The word "Amended" is written in

ink on the order contained in the official file. It should be noted that there is no explanation why the handwritten word "Amended" does not appear on the copy of the August, 1986 order included in the Blodgetts' brief in this case although the date and Judge Dee's signature are identical. It should also be noted that the added paragraphs in Judge Dee's amended order of August, 1986 pertaining to its nunc pro tunc effectiveness and dismissal with prejudice are not merely cosmetic but substantively enlarge the scope of his May, 1986 order.

6. Like the other unexplained omissions by the Blodgetts stated above, the Blodgetts' brief in this case does not mention that Judge Dee's August, 1986 order in the consolidated cases was the replacement for and substantially changed his prior order of May, 1986.

7. The Blodgetts did not give Betty Pursell notice of any motion to seek an order amending Judge Dee's May, 1986 order. See the affidavit of Betty Pursell in the addendum.

8. On or about September 11, 1986 Betty Pursell filed a motion to set aside Judge Dee's August order and obtained an extension of time to file an appeal. Copies of the motion to set aside (I) Judge Dee's August order and the order extending the time to appeal (J) are in the addendum. Betty Pursell's motion was heard on September 24, 1986. As

of the date hereof Judge Dee has not ruled on Betty Pursell's motion to set aside the amended order of August 13, 1986.

9. On or about September 15, 1986, the Blodgetts filed yet another motion with Judge Dee in the consolidated cases and for the first time asserted that Rule 60(a) was applicable to correct a "clerical" error in Judge Baldwin's May, 1980 order. On September 26, 1986 Judge Dee signed the third 1986 order prepared by the Blodgetts' counsel quieting title in the Blodgetts. Copies of the Blodgetts' September, 1986 motion (K) and supporting memorandum (L) and Judge Dee's order (M) of September 26, 1986 are in the addendum. It should be noted that although Rule 60(a) was first mentioned and relied on in the Blodgetts' motion of September 15, 1986, the order prepared by the Blodgetts' counsel and signed by Judge Dee on September 26, 1986 specifically cites the hearing of May 2, 1986 as a basis for granting the motion and does not state that the order amends or replaces the two prior orders signed by Judge Dee in May and August, 1986, which prior orders also cite the hearing on May 2, 1986.

10. Because the extension of time to appeal was due to expire, Betty Pursell filed a notice of appeal in the consolidated cases on October 10, 1986. A copy of her notice of appeal (N) is in the addendum. Betty Pursell also filed an

amended notice of appeal with the complete caption of the consolidated cases on October 14, 1986, a copy of which is in the addendum (O).

11. Although the Blodgetts have argued at length in their brief that they are equitably entitled to prevail in this case, Betty Pursell's affidavit shows that contrary to their assertions of damage, the Blodgetts benefitted very substantially in the transaction with her in addition to retaking possession of the property. See the affidavit of Betty Pursell in the addendum.

12. The Blodgetts brought this present action against Stanley L. Pace and Allan D. McComb individually as well as d/b/a Alco Investment. While it seems clear that the Blodgetts cannot object to Pace and McComb defending themselves individually, it is not clear whether the Blodgetts can properly now object to the lapsed certificate for Alco Investment. Nonetheless, to avoid the question, Pace and McComb have assigned the Zions' judgments to themselves in their own names as tenants in common. Included in the addendum is a notarized copy of said assignment (P).

DISCUSSION

As shown by the facts stated above, the Blodgetts' 1986 acts and omissions by which they sought to set aside Judge

Baldwin's dismissal and obtain a judgment of quiet title in the consolidated cases and then their request for this court to take judicial notice of other matters emphasizes the impropriety of the summary judgment in their behalf in this case. They have attempted to transform Judge Baldwin's 1980 order into a judgment of quiet title by not disclosing their own 1980 written stipulation which would supersede the prior indefinite oral stipulation they have cited both to this court and to Judge Dee. The written stipulation clearly indicates that Judge Baldwin's order was in accord with the parties' intentions in 1980.

The Blodgetts' first motion to Judge Dee in March, 1986 in the consolidated cases relied on Rule 60(b) and the oral stipulation as the authority for setting aside Judge Baldwin's 1980 order and granting a judgment of quiet title. Rule 60(b) requires that a motion for relief from a judgment "shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three months after the judgment, order, or proceeding was entered or taken." Thus, under subsections (1) through (4), any motion alleging mistake, inadvertence, surprise, or excuseable neglect, newly discovered evidence, fraud or misrepresentation or where the summons has not been personally served, must be made within three months.

A motion for any other reason under Rule 60(b) must be brought within a reasonable time. It is doubtful whether the six year period from 1980 to 1986 before any motion was made would be considered a reasonable time to wait. Moreover, it is without question that the Blodgetts were put on notice in April, 1985 (R. 22-23) that Pace and McComb intended to execute on the property and yet it was almost a year later when the Blodgetts made their first motion to Judge Dee under Rule 60(b).

On September 15, 1986 the Blodgetts shifted their reliance for authority in the consolidated cases from Rule 60(b) to Rule 60(a) and alleged a clerical mistake in Judge Baldwin's order which allegedly could be corrected by Judge Dee. On September 26, 1986 Judge Dee signed the Blodgetts' proposed order whose provisions are identical to the amended order Judge Dee had previously signed on August 13, 1986. Presumably Judge Dee's September, 1986 order supersedes his earlier order included in the Blodgetts' brief to this court. In any case, it is clear that there is no clerical mistake to be corrected under Rule 60(a). The changes which the Blodgetts requested Judge Dee to make were substantial. The entire subject of quiet title including a lengthy legal description is a substantive addition and could not be considered merely a clerical mistake in recording the judgment.

Moreover, it is difficult to conclude that Judge Baldwin's order was the result of a clerical error in light of the 1980 written stipulation prepared, signed and filed by the Blodgetts which written stipulation did not cover the matters the Blodgetts now want to add. Judge Baldwin did exactly what he was asked to do by the written stipulation and by the written order prepared for his signature by the Blodgetts' counsel.

This court has previously dealt with motions under Rule 60(a) to correct alleged clerical mistakes. In Richards v. Siddoway, 24 Utah 2d 314, 471 P.2d 143 (1970), it was determined that a clerical error is one which is made in wrongly recording a judgment rather than in rendering a judgment. In the present case, it is clear that Judge Baldwin's order was based on the written stipulation prepared, signed and filed by the Blodgetts' counsel. Thus, it would seem that there was no mistake in either rendering or recording Judge Baldwin's order which faithfully followed the parties' written stipulation. In Lindsay v. Atkin, 680 P.2d 401 (UT 1984), the trial court signed an order submitted by counsel for defendant Parrish Tools dismissing Parrish Tools from the case with prejudice prior to judgment. Thereafter, judgment was rendered against defendants Atkin and Nyberg, who after they had satisfied the judgment instituted an action against

Parrish Tools asking for indemnification or contribution. Parrish Tools asserted the dismissal with prejudice as a bar. Atkin and Nyberg then asked for relief from the dismissal with prejudice under Rule 60(a). This court stated @ 680 P.2d 402 that:

Rule 60(a) is not intended to correct errors of a substantial nature, particularly where the claim of error is unilateral. The fact that an intention was subsequently found to be mistaken would not cause the mistake to be "clerical."

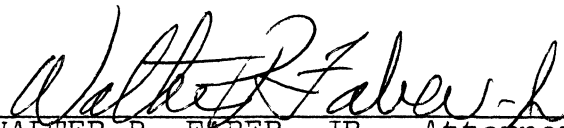
In their brief, the Blodgetts omit relevant facts, assert many irrelevant matters and then go to great lengths to criticize Lorin Pace and include a large number of statements that are not only gratuitous innuendoes and conclusions but are wholly unsubstantiated in the record and are not pertinent to the issue before this court. The obvious purposes of such omissions, criticism and irrelevant assertions are to gain sympathy for the Blodgetts by wrongly creating a villain who can be blamed for the problem and to divert the court's attention from the Blodgetts' written stipulation on which Judge Baldwin's order is clearly based. There may be reasons for the lack of candor but those reasons do not justify that lack.

CONCLUSION

Notwithstanding the assertion of irrelevant matters and the failure to disclose pertinent facts, the issue in this case remains the same, i.e.,

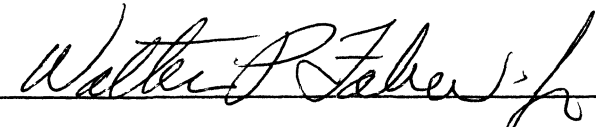
whether Zions' judgment liens were extinguished by Judge Baldwin's order. Certainly the Blodgetts' lis pendens terminated with Judge Baldwin's order which did not quiet title. Pace and McComb are entitled to judgment in their favor.

Respectfully submitted this 22nd day of October,
1986.


WALTER P. FABER, JR., Attorney for
Appellants Pace and McComb

CERTIFICATE OF SERVICE

I hereby certify that I mailed four copies of the foregoing Reply Brief to Messrs. Robert M. Dyer, Lester A. Perry, James J. Cassity, and Ms. M. Karlynn Hinman, of Kirton, McConkie & Bushnell, 330 South 300 East, Salt Lake City, UT 84111, postage prepaid, this 22nd day of October, 1986.



A D D E N D U M

ADDENDUM

Blodgetts' 1980 written stipulation	A
Judge Baldwin's 1980 order	B
Blodgetts' March, 1980 motion to Judge Dee	C
Blodgetts' March, 1980 memorandum to Judge Dee . .	D
Pursell's September, 1986 affidavit	E
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Judge Dee's May, 1986 order	G
Judge Dee's August, 1986 amended order	H
Pursell's September, 1986 motion to set aside Judge Dee's order	I
Judge Dee's September, 1986 order extending Pursell's appeal time	J
Blodgetts' September, 1986 motion to Judge Dee . .	K
Blodgetts' September, 1986 memorandum to Judge Dee.	L
Judge Dee's September, 1986 order	M
Pursell's September 10, 1986 notice of appeal . . .	N
Pursell's September 14, 1986 amended notice of appeal	O
Alco Assignment to Pace and McComb	P

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BY *[Signature]*
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,

STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his
wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,
et al.,

Defendants.

STIPULATION OF DISMISSAL

Civil No. 223407 and
C-78-8017
(Consolidated)

Plaintiffs and defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc. and Water Park Corporation stipulate and agree as follows:

1. To the extent that judgment has not heretofore been entered, the Complaint of plaintiffs against the said defendants and specifically any claim of plaintiffs against defendant Betty Purcell Martsch with regard to the property in question are to be dismissed with prejudice.

2. Any and all counterclaims by the defendants are to be dismissed with prejudice.

3. The judgments heretofore entered against defendants Raco Car Wash Systems, Inc. and Water Park Corporation are deemed paid and satisfied.

4. Any monies on deposit, specifically including the sum of \$2,450 heretofore deposited by Michael Roll dba Aaron's Cottonwood Mowers as property rentals, are to be paid to plaintiffs.

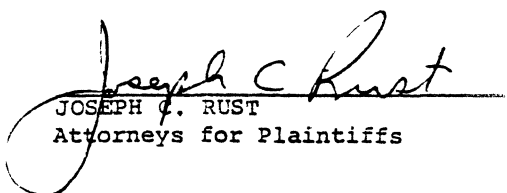
5. Judgments heretofore entered against any of the said defendants by the court will not be appealed to the Supreme Court


of the State of Utah.

6. Each party is to bear its own costs.

Dated this 20 day of March, 1980.

KIRTON & McCONKIE


JOSEPH C. RUST
Attorneys for Plaintiffs


RONALD C. BARKER
Attorney for Betty Purcell

STATE OF UTAH) ss
COUNTY OF SALT LAKE)

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 14 DAY OF OCTOBER 19 80

H. DIXON HINDLEY, CLERK
BY Ronald C. Barker DEPUTY

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FILED
SALT LAKE COUNTY
MAY 5 1980
CLERK
DEPUTY CLERK

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,

STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his)
wife,

Plaintiffs,) ORDER

vs.

JOE MARTSCH, BETTY PURCELL,)
aka BETTY PURCELL MARTSCH,
et al.,

Civil No. 223407 and
C-78-8017
(Consolidated)

Defendants.)

Upon the Stipulation of counsel and for good cause appearing,
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that to the
extent judgment has not heretofore been entered, the Complaint
of plaintiffs against defendants Betty Purcell Martsch, Raco
Car Wash Systems, Inc., and Water Park Corporation is hereby
dismissed with prejudice and any and all counterclaims of said
defendants are hereby dismissed with prejudice, and each party
to bear its own costs.

IT IS FURTHER ORDERED that the sum of \$2,450 on deposit
with the court in this case be paid over to plaintiffs by the
clerk of the court.

Dated this 5 day of May, 1980.

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT
COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY
CERTIFY THAT THE ABOVE AND FOREGOING IS
A TRUE AND FULL COPY OF AN ORIGINAL DOCU-
MENT ON FILE IN MY OFFICE AS SUCH CLERK
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 4th DAY OF OCTOBER 19 80

H. DIXON HINDLEY, CLERK
BY Mark A. Hinchey DEPUTY

ERNEST F. BALDWIN, JUDGE

ATTEST
W. STEPHEN STANG
CLERK

Deputy Clerk

FILED

CLERK'S OFFICE

APR 23 2 06 PM '86

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his wife,)	
	)	MOTION TO SET ASIDE
Plaintiffs,	)	ORDER OF DISMISSAL AND
	)	ENTER JUDGMENT OF QUIET TITLE
vs.)	
)	
JOE MARTSCH, BETTY PURCELL,	)	Civil No. 223407 and
aka BETTY PURCELL MARTSCH,	)	C-78-8017 (Consolidated)
)	
Defendants.)	

Plaintiffs move the court to set aside the order of dismissal against defendant Betty Purcell Martsch, signed May 5, 1980, and entered May 5, 1980, and further move the court to enter a quiet-title judgment against said defendant on plaintiffs' behalf.

This motion is supported by the accompanying Memorandum of Points and Authorities and affidavits.

DATED this 17th day of March, 1986.

KIRTON, McCONKIE & BUSHNELL

STATE OF UTAH)
COUNTY OF SALT LAKE) ss
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 14 DAY OF APRIL 19 86
H. DIXON HINDLEY, CLERK

Lester A. Perry
Lester A. Perry

FILMED

Katie Youngberg

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his wife,)	
	)	MEMORANDUM OF POINTS AND
Plaintiffs,	)	AUTHORITIES IN SUPPORT OF
	)	MOTION TO SET ASIDE ORDER
vs.	)	OF DISMISSAL AND ENTER
	)	JUDGMENT OF QUIET TITLE
JOE MARTSCH, BETTY PURCELL,)	
aka BETTY PURCELL MARTSCH,	)	Civil No. 223407 and
	)	C-78-8017 (Consolidated)
Defendants.)	

Plaintiffs, William D. Blodgett and Florence G. Blodgett (hereinafter referred to as "the Blodgetts"), submit this Memorandum in support of their Motion to Set Aside Order of Dismissal and Enter Judgment of Quiet Title.

STATEMENT OF FACTS

1. The Blodgetts sued Betty Purcell, aka Betty Purcell Martsch, aka Betty Purcell Alexander (hereinafter referred to as "Purcell"), for the return of certain real property in which Purcell wrongfully obtained an interest. A Lis Pendens was recorded at the time this lawsuit was commenced on November 4, 1974. This action is

the case at bar and is known as Blodgett v. Purcell, et al., consolidated Civil Nos. 223407 and C-78-8017.

2. After six years of litigation and one trip to the Supreme Court, the parties were ready for trial. On December 7, 1979, a pretrial settlement conference was held before the Honorable Ernest F. Baldwin, Jr. At that conference, the parties read a complete settlement into the record. With respect to the dispute between the Blodgetts and Purcell, settlement was agreed to as follows:

a. Purcell's interest in the subject real property would be quieted in the Blodgetts and Purcell would give the Blodgetts a quit-claim deed to her interest.

b. The parties would jointly release each other from all other claims of the Complaint and Counter-Claim and Purcell would be dismissed.

3. Attached hereto is a copy of the transcript of this settlement conference. The quit-claim deed was obtained, but a judgment of quiet title was not entered due to an oversight of the parties. The Blodgetts believed that they had received clear title to their property by virtue of Purcell's quit-claim deed. However, several months prior to the quit-claim deed, Zions Bank took out judgment against Purcell, a copy of which is attached, for \$27,262.59 principal, interest and attorney's fees. The judgment was based on a loan and promissory note. (The amount of the

judgment after fees and interest is presently approximately \$50,000.) A judgment lien attached to Purcell's interest in the real property before she quit-claimed her interest to the Blodgetts. The Blodgetts were unaware of this fact at the time.

4. A similar judgment, a copy of which is attached, was previously awarded to Zions Bank against Mr. Loren Pace (hereinafter referred to as "Pace"), a co-signer on the Purcell promissory note. Pace was Purcell's attorney and initially represented Purcell in the Blodgett v. Purcell action, the case at bar. Pace was not initially pursued by Zions while he was a member of the Utah State Legislature. However, Zions thereafter pursued collection from Pace. Pace paid the judgment in full and the judgment and its underlying judgment lien were assigned to Alco Investment. Alco Investment is a "DBA" of Pace's son, Mr. Stanley Pace. Mr. Stanley Pace executed on the subject real property asserting an alleged interest superior to the interest of the Blodgetts by virtue of the assignment of the Zions judgment lien. (See Affidavit of William D. Blodgett hereinafter "Blodgett Affidavit".)

5. Blodgett brought an action to stay the execution and terminate any claimed interest of Zions. This action is known as Blodgett v. Zions First National Bank, et al., Civil No. C85-3348. On December 16, 1985, oral argument was heard on cross-motions for summary judgment between the Blodgetts and Alco Investment concerning their separate claims against the property. Judge Sawaya

subsequently ruled on behalf of the Blodgetts extinguishing and terminating any alleged interest of Zions, Pace and Alco Investment in the real property. A copy of the Summary Judgment is attached. Alco Investment has appealed.

6. The Blodgetts have hereby moved this court to set aside the dismissal of Purcell in the Blodgett v. Purcell, et al. case, Consolidated Civil Nos. 233407 and C-78-817 and enter judgment of quiet title against Purcell which would terminate and extinguish Purcell's interest in the real property. This judgment of quiet title formed the foundation of the settlement at the pretrial settlement conference held on December 7, 1979, and was agreed to by the parties.

7. Pace withdrew as Purcell's attorney during the six year period of litigation of the Blodgett v. Purcell, et al. case and was replaced by Mr. Ronald C. Barker. Mr. Barker has been contacted concerning the present motion before the court and has indicated that he "wants nothing to do with Purcell." Evidently, she abandoned him with an unpaid attorney's fee. Mr. Barker gave the Blodgetts his last known address of Purcell, Route 1, Third East, Rupert, Idaho 83350. The Blodgetts have attempted to personally serve Purcell with the pleadings surrounding their present motion. (See Affidavit of Lester A. Perry.)

ARGUMENT

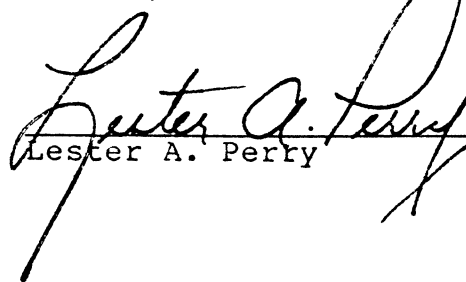
Rule 60(b) allows the court to set aside an order or judgment for any reason justifying relief from the operation of the

order or judgment. The trial court is granted great discretion on whether the order or judgment should be set aside.

The Blodgetts have asked the court to give them nothing more than what they originally sued for and what was agreed to in the pretrial settlement conference, i.e. termination of any claim of Purcell in the real property and conveyance of clear title to the Blodgetts. The Blodgetts believed that Purcell was conveying clear title to them by virtue of the quit-claim deed. They were unaware of the Zions Bank judgment against Purcell entered several months before the quit-claim deed. Therefore, the quiet-title judgment was overlooked by the parties even though it was the basis of the settlement. It should now be entered.

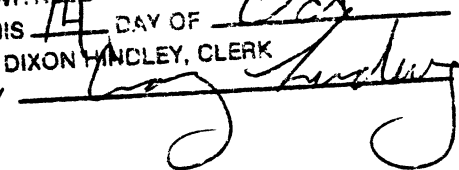
DATED this 17th day of March, 1986.

KIRTON, McCONKIE & BUSHNELL


Lester A. Perry

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 14 DAY OF Oct 19 86
H. DIXON HINDLEY, CLERK
BY  DEPUTY

1 IN THE THIRD DISTRICT COURT IN AND FOR
2 SALT LAKE COUNTY, STATE OF UTAH
3

4 :
5 WILLIAM T. BLODGETT, and :
6 FLORENCE G. BLODGETT, His wife, :
7 :
8 Plaintiffs, : Case No. C-78-8017
9 vs. : 223407
10 :
11 JOE MARTSCH, et al., :
12 :
13 Defendants. :
14 :
15 :
16 :
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24 :
25 :

COPY

10 TRANSCRIPT OF PROCEEDINGS
11

12 December 7, 1979

13 BEFORE THE HONORABLE ERNEST F. BALDWIN, JR.
14 District Court Judge

15 A P P E A R A N C E S:

16 For the Plaintiffs: JOSEPH C. RUST
17 DAN S. BUSHNELL
18 Attorneys at Law
336 South 300 East
Salt Lake City, Utah 84111
19 For the Defendants: RON BARKER
20 Attorney for Defendant, Purcell
2870 South State St.
Salt Lake City, Utah 84115

21
22 WALTER R. ELLETT
23 Attorney for Defendant Ashworth
5085 South State St.
Murray, Utah 84107

24
25 IRVING H. DIELE
ROY HASLAM
Attorneys for Valley Bank & Trust
& Tenney
80 West Broadway, #300
Salt Lake City, Utah 84102

COPY

1 MR. BIELE: Mr. Biele and Mr. Haslam represent-
2 ing Valley Bank and Trust and Tenney. We have agreed
3 to settle this on payment of \$18,000.00 and complete
4 dismissals with prejudice of the entire action. Both
5 sides.

6
7 THE COURT: In both cases?

8 MR. BUSHNELL: All cases.

9 THE COURT: There are only two cases. They
10 are consolidated.

11 MR. BARKER: That is correct.

12 THE COURT: You are associated with Mr. Biele?

13 MR. HASLAM: I am.

14 THE COURT: Do you so stipulate, Mr. Barker?

15 MR. BARKER: Yes. Our stipulation includes
16 both cases.

17
18 MR. BUSHNELL: State who you represent first.

19 MR. BARKER: I represent Betty Purcell and
20 Water Park Corporation. In the two consolidated cases
21 our stipulation is we dismiss all of our claims and
22 counterclaims and rights of appeal and quit-claim any
23 right, title or interest in and to the real property
24 involved in exchange for a complete and total release
25

1 by Blodgetts in both cases as to their claims and as to
2 their judgment.

3 THE COURT: You mean satisfy the judgment?

4 MR. BARKER: That is correct.

5 MR. RUST: Yes.

6 MR. BARKER: Each party bear their own costs and
7 attorney's fees.
8

9 MR. BUSHNELL: Could we go this way --

10 THE COURT: Okay.

11 MR. BUSHNELL: Yes.

12 MR. ELLETT: I represent Wayne Ashworth and
13 it is proposed we present to the Court the fact that
14 Mr. Ashworth will contribute the sum of \$2,000.00 to
15 the final settlement of this matter and in exchange for
16 a full and complete release and dismissal of the actions.
17

18 THE COURT: Everybody will stipulate and say
19 they are making no -- this is not regarded as an admission
20 of liability or fault on anybody's part but, for the
21 purpose of -- et cetera?

22 MR. ELLETT: Yes.

23 MR. BARKER: Yes.

24 THE COURT: Mr. Bushnell and Mr. Rust on behalf
25

1 of the --

2 MR. RUST: Yes, we represent the Plaintiffs,
3 the Blodgetts and we accept the offers making a
4 total cash settlement of \$20,000.00 plus the releases
5 as mentioned here.

6 THE COURT: Who is going to prepare them? Let
7 me say, may I have them by the end -- before the end
8 of the year?

9 MR. BUSHNELL: Lets do it quicker than that.

10 THE COURT: Yes, you would like it done quicker
11 but, I don't want it to go past.

12 MR. BUSHNELL: Gentlemen, can't we say we'll
13 have this by Wednesday of next week? We have all
14 reserved this for trial, lets go ahead.

15 MR. BIELE: Yes.

16 MR. BUSHNELL: We'll get the quit-claims we
17 want signed, you get the releases and satisfactions
18 you want signed. Why don't you prepare the release
19 you want for the bank and get the check and we'll go
20 from there. Will that be all right?

21 THE COURT: A dismissal with prejudice of the
22 action.

1 MR. BUSHNELL: We'll prepare the dismissal.
2 MR. BARKER: If you want quit-claim deeds,
3 we are going to mail them to Idaho and get them back.
4 That is a few days mail time.
5 MR. BUSHNELL: Lets get all of it done plus
6 that -- well --
7 MR. BARKER: If you can do it by the Court
8 Order and quiet title to the matter --
9 MR. BUSHNELL: Lets get the deeds too.
10 THE COURT: All right.
11 MR. BARKER: Very good.
12 THE COURT: You are gentlemen and scholars.
13 (Whereupon these proceedings were concluded.)
14
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FILED IN CLERK'S OFFICE
Salt Lake County, Utah



March 1976

Russell F. Lamer
Deputy Clerk

DeLyle H. Condie
CALLISTER, GREENE & NEBEKER

Attorney for Plaintiff
Address 800 Kennecott Bldg.
Salt Lake City, Utah 84133
Phone 531-7676

Bk. 137 NO. 1607
3-5-76 - 8:09 A.M.

In the District Court of SALT LAKE County

State of Utah

ZIONS FIRST NATIONAL BANK,
a National Association,

Plaintiff....

vs.

BETTY PURSELL ALEXANDER and
LORIN N. PACE

Defendant....

JUDGMENT BY
DEFAULT

Civil No. 232782

IN THIS ACTION, the defendant LORIN N. PACE
having been regularly served with process, and having failed to appear and answer the plaintiff's
complaint filed herein, the legal time for answering having expired, and the default of the said
defendant in the premises having been duly entered according to law, now upon application of said
plaintiff to the above entitled court, judgment is hereby entered against said defendant, in
pursuance of the prayer of said complaint.

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered,
adjudged and decreed that said plaintiff do have and recover from the said defendant the sum
of Thirty-One Thousand Sixty-Four Dollars and 52/100 (\$31,064.52) Dollars,
with interest thereon at the rate of 3 per cent per annum from the date hereof,
till paid, together with said plaintiff's costs and disbursements incurred in this action, amounting
to the sum of \$ Twenty-Four and 60/100 (\$24.60) and attorneys fees in the
Amount of Two Thousand Five Hundred and no/100 (\$2,500.00) Dollars
Judgment rendered March, A.D., 1976.

WITNESS, the Clerk of said Court, with the seal thereof, attached, this 3rd day of
March, A.D., 1976.

BY THE COURT
James L. Lawrence
DISTRICT JUDGE

W. STERLING EVANS, Clerk
Russell F. Lamer
By Deputy Clerk

FILMED

FILED IN CLERK'S OFFICE
Salt Lake City, Utah

JUN 01 1979

W. Sterling Evans, Clerk 3rd Dist. Court
By *Phil [Signature]*
Deputy Clerk

John A. Beckstead
CALLISTER, GREENE & NEBEKER
Attorney for Plaintiff
Address 800 Kennecott Bldg.
Salt Lake City, Utah 84133
Phone 531-7676

BA-153 NO. 996
6-7-79 - 9:04 A.M.

In the District Court of SALT LAKE County
State of Utah

ZIONS FIRST NATIONAL BANK,
a National Association,

Plaintiff....

vs.

BETTY PURSELL ALEXANDER and
LORIN N. PACE,

Defendants..

JUDGMENT BY DEFAULT

Civil No. 232782

IN THIS ACTION, the defendant BETTY PURSELL ALEXANDER
having been regularly served with process, and having failed to appear and answer the plaintiff's
complaint filed herein, the legal time for answering having expired, and the default of the said
defendant in the premises having been duly entered according to law, now upon application of said
plaintiff to the above entitled court, judgment is hereby entered against said defendant, in
pursuance of the prayer of said complaint.

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered,
adjudged and decreed that said plaintiff do have and recover from the said defendant the sum
of Twenty-Seven Thousand Two Hundred Sixty-Two and 59/100 (\$27,262.59) Dollars,
with interest thereon at the rate of 5% per cent per annum from October 15, 1974
till paid, together with said plaintiff's costs and disbursements incurred in this action, amounting
to the sum of \$32.10 and attorney's fees in the amount of \$2,500.00.

Judgment rendered June, A.D., 1979.

WITNESS, the Clerk of said Court, with the seal thereof, attached, this 1st day of
JUNE, A.D., 1979.

BY THE COURT:

Christine D. Buchanan
District Court Judge

W. STERLING EVANS, COUNTY CLERK, Clerk

By *Phil [Signature]* Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF SALT LAKE, STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT,	)	DEFENDANT BETTY PURSELL'S
his wife,	)	AFFIDAVIT IN OPPOSITION TO
	)	ORDER AND JUDGMENT
Plaintiffs,	)	OF QUIET TITLE
vs.)	
	)	Civil No. 223407
JOE MARTSCH, BETTY PURCELL,	)	and C-78-8017
a/k/a BETTY PURCELL MARTSCH,)	
et al.,)	
Defendants.)	

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

BETTY PURSELL a/k/a BETTY PURCELL, being first duly sworn,
of her own knowledge, states as follows:

1. I am a named defendant in the above consolidated cases.
2. The cases were formally dismissed with prejudice
on May 5, 1980.
3. The 1980 written Stipulation for Dismissal, a copy
of which is attached hereto, was prepared by plaintiffs' counsel.
4. The 1980 written Order of Dismissal with prejudice
was also prepared by plaintiffs' counsel. A copy of said Order
is attached hereto.
5. I was not contacted by plaintiffs or plaintiffs'
counsel from May, 1980 until April, 1986 when I was served with a
new motion by plaintiffs' counsel in the above cases.

6. I was not served with a notice to appoint new legal counsel or appear in person.

7. I did not respond to plaintiffs' motion in 1986 because I was not aware I needed to appear in person, and I believed that the order in 1980 completely resolved the case and that I did not need to answer personally any additional proceedings.

8. It was not until September, 1986 when I talked with my lawyer that I was informed that it would have been prudent for me to have inquired of counsel.

9. In my transaction with plaintiffs, in addition to a number of payments made by me, the plaintiffs received the property back with the extensive improvements I had made on the property, which improvements cost in excess of \$50,000, all of which gave plaintiffs a substantial benefit in addition to their recovery of the property. My interest in the property was originally obtained with the plaintiffs' consent and cooperation.

10. Mr. Lorin N. Pace, my attorney at that time, received no consideration or benefit for signing the obligation to Zions Bank.

11. I was not informed until September 8, 1986 that plaintiffs had obtained an order in May, 1986 setting aside the 1980 dismissal.

12. I was never notified that on August 13, 1986 plaintiffs amended their May, 1986 order.

(cont.)

-3-

DATED this 10th day of September, 1986.

Betty Pursell
BETTY PURSELL

Personally appeared before me, the undersigned Notary Public, BETTY PURSELL, who after being duly sworn stated that she has read the foregoing Affidavit, that the statements made therein are true and correct to the best of her own personal knowledge and belief, and she executed the same in my presence this 10th day of September, 1986.

James L. Brown
Notary Public

Residing at: Salt Lake County

My Commission Expires:

July 7, 1989

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

I, the undersigned, Clerk of the District of
County of Salt Lake State of Utah, do hereby
certify that the foregoing and accompanying
documents are true and correct to the best of
my knowledge and belief.

THIS 16th day of October 1986

BY James L. Brown DEPUTY

FILMED

CLERK OF DISTRICT COURT

MAR 29 2 05 PM '86

Katie Youngberg

Lester A. Perry - A2571
Robert M. Dyer - A0495
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)
FLORENCE G. BLODGETT, his wife,)

Plaintiffs,)

vs.)

JOE MARTSCH, BETTY PURCELL,)
aka BETTY PURCELL MARTSCH,)

Defendants.)

AFFIDAVIT OF
LESTER A. PERRY

Civil No. 223407 and
C-78-8017 (Consolidated)

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, LESTER A. PERRY, having been first duly sworn upon oath
depose and state as follows:

1. During all times relevant hereto I have been counsel
for the Blodgetts.

2. On March 10, 1986, I spoke with Mr. Ronald C. Barker,
the attorney of record for Ms. Betty Purcell during the latter part
of the litigation within the case at bar. Mr. Barker indicated that
he no longer represented Ms. Purcell and wants nothing to do with

her. Mr. Barker gave me his last known address for Purcell as Route 1, Third East, Rupert, Idaho 83350.

DATED this 17th day of March, 1986.

KIRTON, McCONKIE & BUSHNELL

Lester A. Perry
Lester A. Perry

SUBSCRIBED AND SWORN to before me this 17th day of March, 1986.

Susan Wright
Notary Public in and for the
State of Utah

My commission expires:

9/21/88

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF A ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF THE SAID COURT
THIS 14 DAY OF Oct 19 86

H. DIXON HINDLEY, CLERK
BY Craig Hindley DEPUTY

FILMED

JUDGEMENT

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

MAY 13 1986

H. D. [Signature]
By [Signature]

Lester A. Perry - A2571
Robert M. Dyer - A0495
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

BL 206 NO. 3970
5-16-86 - 9:53 AM

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,

Defendants.

ORDER AND JUDGEMENT
OF QUIET TITLE

Civil No. 223407 and
C-78-8017 (Consolidated)

Be it remembered that Plaintiffs' Motion To Set Aside Order of Dismissal and Enter Judgement of Quiet Title came for hearing before the Honorable David B. Dee, of the above entitled court on May 2, 1986, at the hour of ten o'clock a.m.

Plaintiff was present by and through its counsel of record, Mr. Lester A. Perry, of Kirton, McConkie & Bushnell. Defendant, Betty Purcell, aka Betty Purcell Martsch, was not present, either in person or through counsel; said defendant having been previously served with Plaintiffs' Motion and the associated pleadings by personal service on April 1, 1986.

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:

1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Earnest F. Baldwin Jr., is hereby set aside.

2. Judgement is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgement applies is located within Salt Lake County, State of Utah, and is more particularly identified as:

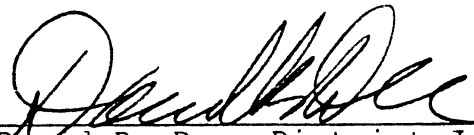
Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°20'50" East along center line of Highland Drive 154.0 feet; thence south 89°15'45" West 197.17 feet; thence South 0°17'45" West 154.0 feet to North line of Vine Street (6100 South); thence North 89°15'45" East along said North line 197.03 feet to the point of beginning.

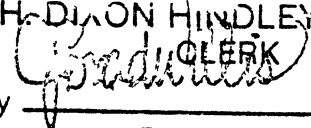
Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1, and more particularly described as follows: Beginning at the intersections of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said

Engineer's Station 176+92.29 bearing South 38°54'40" East; thence North 116.0 feet to a point on a 2367.0 foot radius curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.

Dated this 13 day of May, 1986.

BY THE COURT:


David B. Dee, District Judge

H. DIXON HINDLEY
CLERK
By 
Deputy Clerk

STATE OF UTAH)
COUNTY OF SALT LAKE) 96

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 14TH DAY OF OCTOBER 19 86

H. DIXON HINDLEY, CLERK

BY Mark Fairclough DEPUTY

FILMED

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

AUG 13 11 34 AM '86

H. DEAN HENDLEY CLERK
3rd DIST. COURT

BY *Charles Simon*
DEPUTY CLERK

Lester A. Perry - A2571
Robert M. Dyer - A0495
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)
FLORENCE G. BLODGETT, his wife,)

Plaintiffs,)

vs.)

JOE MARTSCH, BETTY PURCELL,)
aka BETTY PURCELL MARTSCH,)

Defendants.)

Amended
ORDER AND JUDGMENT
OF QUIET TITLE

Civil No. 223407✓ and
C-78-8017 (Consolidated)

Be it remembered that Plaintiffs' Motion To Set Aside Order of Dismissal and Enter Judgment of Quiet Title came for hearing before the Honorable David B. Dee, of the above entitled court on May 2, 1986, at the hour of ten o'clock a.m.

Plaintiff was present by and through it's counsel of record, Mr. Lester A. Perry, of Kirton, McConkie & Bushnell. Defendant, Betty Purcell, aka Betty Purcell Martsch, was not present, either in person or through counsel; said defendant having been previously served with Plaintiffs' Motion and the associated pleadings by personal service on April 1, 1986.

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:

1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Earnest F. Baldwin Jr., is hereby set aside.

2. Judgment is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgement applies is located within Salt Lake County, State of Utah, and is more particularly identified as:

Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°20'50" East along center line of Highland Drive 154.0 feet; thence south 89°15'45" West 197.17 feet; thence South 0°17'45" West 154.0 feet to North line of Vine Street (6100 South); thence North 89°15'45" East along said North line 197.03 feet to the point of beginning.

Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1, and more particularly described as follows: Beginning at the intersections of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said Engineer's Station 176+92.29 bearing South 38°54'40" East; thence North 116.0 feet to a point on a 2367.0 foot radius

curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.

3. This Order shall relate back to and be effective as of May 5, 1980.

4. The Complaint of plaintiffs against defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc., and Water Park Corporation is hereby dismissed with prejudice and any and all counter-claims of said defendants are hereby dismissed with prejudice with the parties to bear their own costs.

5. The sum of \$2,450 on deposit with the court in this case be paid over to plaintiffs by the clerk of the court.

Dated this 13 day of August, 1986.

BY THE COURT:

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 14TH DAY OF OCTOBER 19 86

H. DIXON HINDLEY, CLERK

BY Mark Fairclough DEPUTY

David B. Dee
David B. Dee, District Judge

ATTEST

H. DIXON HINDLEY

Clerk

By

Charles J. Smith
Deputy Clerk

JAMES A. ARROWSMITH #0130
Attorney for Defendant
Betty Pursell
2102 East 3300 South
Salt Lake City, Utah 84109

FILED IN CLERK'S OFFICE
Salt Lake County Utah

SEP 16 1986
H. Dixon
By *[Signature]* Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his)	
wife,)	
	)	MOTION TO SET ASIDE
Plaintiffs,	)	AMENDED ORDER AND JUDGMENT
	)	OF QUIET TITLE
vs.)	
)	
JOE MARTSCH, BETTY PURCELL,	)	Civil No. 223407 and
aka BETTY PURCELL MARTSCH,	)	C-78-8017 (Consolidated)
)	
Defendants.)	

Defendant Betty Pursell, by and through her attorney, hereby moves the Court to set aside the Order and Judgment of Quiet Title entered August 13, 1986, and in support thereof alleges as follows:

1. That Plaintiff's attorney spoke with Mr. Ronald C. Barker, the attorney of record for this Defendant, who informed Plaintiff's attorney that he no longer represented Defendant Betty Pursell. (Affidavit of Lester A. Parry, a copy of which is attached hereto as Exhibit "A").

2. That Plaintiff failed to require Defendant by written notice to appoint another attorney or to appear in person. (Affidavit of Betty Pursell attached hereto as Exhibit "B").

3. That in violation of Utah Code Ann. Section 78-51-36 (1953), Plaintiffs proceeded with their Motion to Set Aside

Order of Dismissal and Enter Judgment of Quiet Title.

4. That Plaintiffs obtained an Order and Judgment of Quiet Title, which was entered May 13, 1986.

5. That Plaintiff failed to provide a copy of such Order and Judgment of Quiet Title to Defendant. (Affidavit of Betty Pursell).

6. That without notice to Defendant, Plaintiff sought an Amended Order and Judgment of Quiet Title. (Affidavit of Betty Pursell).

7. That Plaintiff thereafter obtained an Amended Order and Judgment of Quiet Title, which was entered August 13, 1986.

8. That Plaintiff failed to provide a copy of such Amended Order and Judgment of Quiet Title to Defendant. (Affidavit of Betty Pursell).

9. That a motion for relief of a final judgment or order pursuant to Rule 60(b) of the Utah Rules of Civil Procedure must be made "within a reasonable time," and for certain reasons must be made within 3 months after the order or judgment was taken.

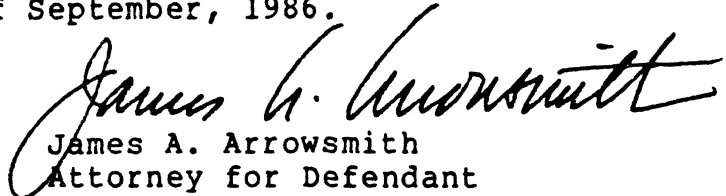
10. That the Amended Order and Judgment of Quiet Title entered August 13, 1986 is void because it purports to set aside the Order signed May 5, 1980 and to relate back and be effective as of May 5, 1980 in contravention of Rule 60(b) of the Utah Rules of Civil Procedure, which provides:

A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

WHEREFORE, Defendant Betty Pursell moves the Court to set aside the Amended Order and Judgment of Quiet Title entered

August 13, 1986 and the Order and Judgment of Quiet Title entered May 13, 1986.

Dated this 10th day of September, 1986.

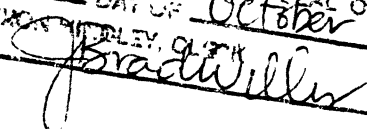

James A. Arrowsmith
Attorney for Defendant
Betty Pursell

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September, 1986 I delivered a copy of the foregoing Motion to Set Aside Order and Judgment of Quiet Title by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Lester A. Perry
Robert M. Dyer
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111



STATE OF UTAH)
COUNTY OF SALT LAKE) SS
I, JAMES A. ARROWSMITH, CLERK OF THE DISTRICT
COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY
CERTIFY THAT THE ANNEXED AND ADDRESSING IS
A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT
FILED IN MY OFFICE AS SUCH CLERK.
THIS 11 DAY OF October 1986
H. DICKINSON, CLERK
BY  DEPUTY

JAMES A. ARROWSMITH #0130
Attorney for Defendant
Betty Pursell
2102 East 3300 South
Salt Lake City, Utah 84109

SEP 16 1986

H. Dixon Hindley, Jr., Clerk
By [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his)	
wife,)	
	)	ORDER EXTENDING TIME
Plaintiffs,	)	TO FILE NOTICE OF APPEAL
)	
vs.)	
)	
JOE MARTSCH, BETTY PURCELL,	)	Civil No. 223407 and
aka BETTY PURCELL MARTSCH,	)	C-78-8017 (Consolidated)
)	
Defendants.)	

Pursuant to Rule 4(e) of the Utah Rules of Appellate Procedure, upon the Ex Parte Motion of Defendant Betty Pursell and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for filing a Notice of Appeal with respect to the Amended Order and Judgment of Quiet Title entered August 13, 1986 is extended to October 12, 1986, which date is 30 days past the prescribed time for filing a Notice of Appeal with respect to such Amended Order and Judgment.

Dated this 11 day of September, 1986.

BY THE COURT:

[Signature]
David B. Dee, District Judge

H. DIXON HINDLEY
CLERK

17 October 1986

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

SEP 25 1986

By [Signature] Clerk of Court

Robert M. Dyer - USB No. A0495
Lester A. Perry - USB No. A2571
KIRTON, McCONKIE & BUSHNELL
Attorneys for WILLIAM D. BLODGETT
and FLORENCE G. BLODGETT
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his wife,	)	MOTION TO CORRECT CLERICAL
	)	ERROR UNDER RULE 60(a) OF
Plaintiffs,	)	THE UTAH RULES OF CIVIL
	)	PROCEDURE
vs.)	
)	
JOE MARTSCH, BETTY PURCELL,)	
aka BETTY PURCELL MARTSCH,	)	Civil No. 223407 and
	)	C-78-8017 (Consolidated)
Defendants.)	

J. Dee

Plaintiffs WILLIAM D. BLODGETT and FLORENCE G. BLODGETT
move the Court pursuant to Rule 60(a) of the Utah Rules of Civil
Procedure for an order correcting the clerical error in
accordance with the order attached hereto.

Dated this 15th day of September, 1986.

KIRTON, McCONKIE & BUSHNELL

By: Lester A. Perry

Lester A. Perry
Attorneys for WILLIAM D.
BLODGETT and FLORENCE G.
BLODGETT

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 1986, I served a copy of the foregoing Motion to Correct Clerical Error Under Rule 60(a) of the Utah Rules of Civil Procedure by mailing a true and correct copy, postage prepaid, to:

James A. Arrowsmith, Esq.
2102 East 3300 South
Salt Lake City, UT 84109

Mona J. Cann

STATE OF UTAH)
COUNTY OF SALT LAKE) 98

I, THE UNDERSIGNED CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 17 DAY OF Oct 19 86
H. DIXON HINDLEY, CLERK
BY Craig Lindley DEPUTY

FILMED

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

SEP 22 3 53 PM '86

Linda Simpson

Robert M. Dyer - USB No. A0495
Lester A. Perry - USB No. A2571
KIRTON, McCONKIE & BUSHNELL
Attorneys for WILLIAM D. BLODGETT
and FLORENCE G. BLODGETT
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)	
FLORENCE G. BLODGETT, his wife,	)	REPLY MEMORANDUM TO THE MOTION
	)	TO SET ASIDE ORDER AND
Plaintiffs,	)	JUDGMENT OF QUIET TITLE
)	
vs.)	
)	
JOE MARTSCH, BETTY PURCELL,)	
aka BETTY PURCELL MARTSCH,	)	Civil No. 223407 and
	)	C-78-8017 (Consolidated)
Defendants.)	

Plaintiffs WILLIAM D. BLODGETT and FLORENCE G. BLODGETT
hereby submit their Reply Memorandum To The Motion To Set Aside
Order And Judgment Of Quiet Title Of Defendant Betty Purcell

STATEMENT OF FACTS

1. In 1969, the Blodgetts owned two adjacent tracts of
land located at approximately 6100 South Highland Drive in Salt
Lake County, Utah. The Blodgetts operated a grocery store on the
larger tract (the "Store Tract"). They leased the smaller tract

L

(the "Car Wash Tract") to Raco for the installation of a car wash in early 1969. The lease agreement with Raco provided that the Blodgetts would pledge the Car Wash Tract as security for a loan to Raco to finance the car wash installation. Raco, acting through its president Betty Purcell, made arrangements for the loan with Valley Bank and Trust Company ("Valley Bank").

2. Without the Blodgetts' knowledge and prior to closing the loan, Valley Bank advised Raco that it required additional security in order to make the loan for the installation of the car wash. Raco falsely advised Valley Bank that the Blodgetts had agreed that both their Store Tract and the Car Wash Tract could be used as security for Raco's loan.

3. Valley Bank prepared a trust deed granting it a security interest in both the Car Wash Tract and the Store Tract. In addition, without first discussing the matter with either Raco or the Blodgetts, Valley Bank prepared a promissory note in its favor for signature by the Blodgetts as co-makers.

4. On November 5, 1971, the Blodgetts attended the Raco loan closing at Valley Bank's offices. They intended to execute documents necessary for the hypothecation of the Car Wash Tract alone. The only commitment the Blodgetts had made to anyone concerning the use of any of their real property as security

until the moment of closing was the one contained in the Raco lease; Valley Bank had a copy of the lease.

5. Although Valley Bank usually explained the terms of loan documents to borrowers unless they demonstrated some degree of sophistication, it offered the Blodgetts no explanation of the contents of the trust deed and, in particular, failed to call attention to the trust deed's departure from a material provision of the Raco lease: that only the Car Wash Tract would be used as security for Raco's loan.

6. Valley Bank personnel spent half an hour explaining the documents to Betty Purcell, although neither she nor her corporation was making any contribution to the real property collateral for the loan. Valley Bank personnel made no similar effort to explain the loan documents to the Blodgetts even though the Blodgetts announced that they did not understand them.

7. When the Blodgetts asked about the promissory note, Valley Bank falsely advised them that by executing the loan documents the Blodgetts assumed only a secondary or "stand-by" obligation. The Blodgetts requested copies of all loan documents for review; however, Valley Bank sent them a copy of the promissory note only.

8. The Raco loan went into default; but Valley Bank did not notify the Blodgetts or suggest to them that the Store Tract was in jeopardy.

9. Valley Bank foreclosed on the Store Tract in 1973. To effectuate the foreclosure, Valley Bank utilized Wayne Ashworth ("Ashworth") as trustee.

10. Ashworth failed to comply with the procedures prescribed for non-judicial foreclosure of trust deeds in Utah. Ashworth held a public trustee's sale which the Blodgetts attended. By reason of their misconception that only the Car Wash Tract was subject to sale, the Blodgetts failed to take the most elementary steps to protect their interests. For example, they did not require Ashworth to sell the property in separate tracts or in a particular sequence. Moreover, the Blodgetts did not enter a bid even though the high bid was a small fraction of the property's value. The high bidder at the sale was Joe Martsch, a director of Raco and Betty Purcell's husband at the time.

11. Neither Ashworth nor Valley Bank consulted with, advised, or sought instruction from the Blodgetts before or during the sale. Both acted purely in Valley Bank's interest and took the course of action most likely to assure that Valley Bank would either be paid in full or acquire the tracts at a bargain price.

12. On November 11, 1973, Joe Martsch conveyed a one-half undivided interest in the Store Tract to Water Park Corporation ("Water Park"), a corporation wholly owned by Betty Purcell. Lorin Pace witnessed and notarized the conveyance.

13. The Blodgetts first became aware that the Store Tract had been included in the sale when Joe Martsch asserted his rights of ownership after the sale. In 1974 the Blodgetts brought suit to obtain the return of the Store Tract in the Third Judicial District Court, Salt Lake County, Civil No. 223407, against Joe Martsch, Betty Purcell aka Betty Purcell Martsch, Doyle Nease, Raco Car Wash Systems, Inc., a Utah corporation, Wayne A. Ashworth, trustee, Carl W. Tenny, Valley Bank & Trust Company, and First Security Bank of Idaho, N.A. ("Blodgett I"). The Blodgetts also recorded a lis pendens on November 4, 1974 with the Salt Lake County Recorder in Book 3714, at Page 334, giving notice that they had filed Blodgett I to terminate the interests of all of those defendants in and to the Store Tract. Lorin Pace represented Raco and Betty Purcell. See Blodgett v. Martsch, 590 P.2d 298, 300 (Utah 1978). [These facts are set forth within the record and summarized by the Utah Supreme Court in its decision].

14. The Blodgett I defendants moved for summary judgment. The trial court (per Baldwin, J.) granted the motion, and

the Blodgetts appealed. This Court reversed and remanded Blodgett I for trial on December 26, 1978. Blodgett v. Martsch, supra, 590 P.2d at 304.

15. On or about January 16, 1976, while Blodgett I was still pending, Zions filed an action in the Third Judicial District Court, Salt Lake County, against Betty Purcell, a defendant in Blodgett I, and Lorin Pace, seeking judgment for \$27,262.59 on their unpaid promissory note. Zions First National Bank v. Betty Pursell [sic] Alexander and Lorin N. Pace, Civil No. 232782, ("Zions I"). A copy of the promissory note from Lorin Pace and Betty Pursell to Zions is annexed. Zions alleged, inter alia:

2. On or about the 7th day of July, 1971, at Salt Lake City, Utah, the defendants [Purcell and Lorin Pace], and each of them, made, executed and delivered their promissory note to the plaintiff [Zions], in the amount of \$27,262.59, payable on demand at Salt Lake City, Utah. . . .

16. On March 3, 1976, Zions obtained a default judgment in Zions I against Lorin Pace in the amount of \$31,064.52. Fifteen days later, on March 18, 1976, Lorin Pace filed a Motion For Leave To Withdraw As Counsel for Betty Purcell (but not for Raco) in Blodgett I.

17. On August 13, 1976, Zions obtained a default judgment in Zions I against Betty Purcell in the amount of \$31,064.52.

18. Water Park, to which Joe Martsch had conveyed a one-half undivided interest in the Store Tract in 1973, was administratively dissolved September 30, 1977. An order of the trial court in Zions I (per Durham, J.) concluded that Water Park's assets had become the undivided property of Betty Purcell upon the dissolution of Water Park on September 30, 1977. Thus, according to that order, Betty Purcell was the owner of record of a one-half undivided interest in the Store Tract (conveyed from Joe Martsch to Water Park) as of September 30, 1977.

19. In 1978, the Blodgetts brought a second action in the Third Judicial District Court, Salt Lake County, against Betty Purcell and Water Park, seeking to terminate Betty Purcell's and Water Park's interest in the Store Tract. Blodgett v. Betty Purcell aka Betty Purcell Martsch and Water Park Corporation, Civil No. C78-8017, ("Blodgett II").

20. On March 13, 1979, Zions brought a second action in the Third Judicial District Court, Salt Lake County, against Betty Purcell for the purpose of enforcing the judgment obtained against her in Zions I. Zions Bank v. Purcell, Civil No. C79-1685, ("Zions II").

21. On April 11, 1979, the trial court (per Durham, J.) consolidated Blodgett I and Blodgett II for trial.

22. On May 1, 1979, the trial court in Blodgett I and Blodgett II (per Durham, J.) entered an order on default against Water Park, conveying all right, title and interest of Water Park in and to the Store Tract to the Blodgetts. (Certified copy of Judgment, recorded May 1, 1979, in Book 4854 at page 424 of the Records of the Salt Lake County Recorder accompanies this Motion).

23. On May 2, 1979, the trial court in Zions I (per Durham, J.) set aside Zions' August 13, 1976 default judgment in the amount of \$31,064.52 against Betty Purcell.

24. On May 16, 1979, Zions obtained an order in Zions II (per Durham, J.) determining that Water Park owned the Store Tract, that Betty Purcell was the sole shareholder of Water Park, that Water Park had been dissolved on September 30, 1977, and that Betty Purcell became the owner of the subject real property on September 30, 1977 by virtue of the dissolution. The order stated further that:

"Any judgment lien [Zions] may have against defendant [Purcell] which is properly docketed in the office of the Salt Lake County Clerk constitutes a lien upon the above-described property [the Store Tract] as of the date of such docketing if subsequent to September 30, 1977. If any such judgment is

docketed prior to September 30, 1977, such judgment shall constitute a lien commencing September 30, 1977.

Zions had no judgment against Betty Purcell on the date Judge Durham entered this order. The Blodgetts were not parties or participants in Zions I or Zions II.

25. On or about May 29, 1979, Joe Martsch quitclaimed all interest he had in the Car Wash Tract and in the Store Tract to the Blodgetts, thus conveying to them his one-half undivided interest in the Store Tract and his interest in the Car Wash Tract. (A certified copy of the Quit-Claim Deed recorded as Entry No. 3312045 in Book 4907 at Page 650 of the records of Salt Lake County Recorder accompanies this motion).

26. On June 1, 1979, Zions obtained a second default judgment against Betty Purcell in Zions I. The amount of the judgment was \$27,262.59 -- \$3,801.93 less than the amount of the original default judgment Zions had obtained against her.

27. On December 7, 1979, the trial court in Blodgett I and Blodgett II (per Baldwin, J.) held a pretrial hearing during which the parties settled both cases. The terms of the settlement were read into the record.

28. On December 7, 1979, Judge Baldwin entered an order in Blodgett I and Blodgett II (the "Settlement Order") approving the settlement reached at the pre-trial hearing. A

certified copy of the December 7, 1979 Minute Order in Civil No. 223407 is annexed.

29. The terms of settlement approved in the Settlement Order provided for: (1) execution of quitclaim deeds by the defendants in Blodgett I and Blodgett II conveying the Store Tract to the Blodgetts; (2) payment of damages to the Blodgetts; (3) dismissal with prejudice of the Blodgetts' actions; (4) a court order quieting title to the Store Tract in the Blodgetts.

30. On January 15, 1980, Betty Purcell executed a quitclaim deed and delivered it to the Blodgetts pursuant to the terms approved in the Settlement Order. (A certified copy of the Quit-Claim Deed recorded January 24, 1980, in Book 5033 at Page 1094 of the records of Salt Lake County Recorder accompanies this motion).

31. On May 5, 1980, the trial court (per Baldwin, J.) entered an order (the "Dismissal Order") dismissing Betty Purcell as a defendant in Blodgett I and Blodgett II. The Dismissal Order did not include all of the terms of the settlement read into the record at the pre-trial hearing before Judge Baldwin.

32. In 1984 Zions commenced an action in the Third Judicial District Court, Salt Lake County, to renew its Zions I judgments ("Zions III"). Zions First National Bank v. Lorin N. Pace, No. C84-0299. After Zions III was filed, Lorin Pace,

father of Appellant Stanley Pace, paid Zions \$27,262.59, on August 31, 1984, for amounts due under the judgment against him. Counsel for Zions confirmed the payment by Lorin Pace in a letter dated August 18, 1986, a copy of which is annexed. The letter substantiates and explains Zions' averment in its answer in this case that it makes no claim to the subject property.

33. On or about August 31, 1984, Zions purportedly assigned its judgment of May 16, 1979 in Zions I and its judgment of June 2, 1979 in Zions II to Alco. (See paragraph 7 of Answers of Zions Bank and Trust within Blodgett v. Zions First National Bank, C85-3348, and the Assignment attached to said Answer as Exhibit "A"). Alco's DBA expired approximately three weeks later on September 22, 1984.

34. On April 19, 1985, the Blodgetts received an informal notice to enforce lien from Alco. The notice stated that Alco intended to execute on any judgment lien received by it from Zions. (A true and correct copy of this notice is attached to the Blodgetts' complaint as Exhibit "G", delivery of which is admitted by defendants in their Answers).

35. On May 24, 1985, the Blodgetts brought the instant action ("Blodgett III") against Zions, Stanley Pace, McComb and Alco to quiet title to the Store Tract in the Blodgetts. The Blodgetts also recorded a lis pendens.

36. On January 16, 1986 the trial court (per Sawaya, J.) entered an order in Blodgett III granting the Blodgetts' motion for summary judgment. The judgment states:

Therefore, the court hereby orders, adjudges and decrees that:

1. The Motion for Summary Judgment of defendants, Stanley L. Pace and Allen D. McComb dba Alco Investment, is denied.

2. The Motion of plaintiffs as against all defendants, Zions First National Bank, Stanley L. Pace and Allen D. McComb dba Alco Investment, is granted as follows:

a. The judgment liens that arise on behalf of the defendant, Zions First National Bank, within the civil actions known as Zions Bank vs. Purcell and Pace, Civil No. 232782 [Zions I] and Zions Bank vs. Purcell, Civil No. C79-1685, [Zions II], filed in the Third Judicial District Court of Salt Lake County, State of Utah, which judgment liens and their underlying judgments have been assigned to defendants, Stanley L. Pace and Allen D. McComb, dba Alco Investment, are void and of no effect as against the real property that is the subject of this action, [the Store Tract, identified as [description omitted]].

b. Title to the above-identified real property is quieted in the plaintiffs [the Blodgetts] as against any and all right, title, or interest claimed by the defendants, Zions First National Bank and Stanley L. Pace and Allen D. McComb dba Alco Investment.

37. On August 13, 1986, the trial court in Blodgett I and Blodgett II (per Dee, J.) entered an order (the "Order and Judgment of Quiet Title") granting the Blodgetts' unopposed Motion to Set Aside Order of Dismissal and Enter Judgment of Quiet Title. The Blodgetts filed the motion on March 17, 1986 to correct a clerical error in the Dismissal Order to accord with the settlement that had been read into the record and approved by the trial court (per Baldwin, J.). Even though not required to do so, the Blodgetts personally served Betty Purcell with a copy of the motion). The Order and Judgment of Quiet Title provide:

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:

1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Ernest F. Baldwin, Jr., is hereby set aside.

2. Judgment is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgment applies is located within Salt Lake County, State of Utah, and is more particularly identified as: [description omitted].

This Order shall relate back to and be effective as of May 5, 1980.

The Complaint of plaintiffs against defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc., and Water Park Corporation is hereby dismissed with prejudice and any and all counter-claims of said defendants are hereby dismissed with prejudice with the parties to bear their own costs.

The sum of \$2,400 on deposit with the court in this case be paid over to plaintiffs by the clerk of the court.

A copy of the Order and Judgment of Quiet Title is annexed.

ARGUMENT

I. THE COURT MAY PROPERLY ENTER THE ORDER AND JUDGMENT OF QUIET TITLE PURSUANT TO RULE 60(a) OF THE UTAH RULES OF CIVIL PROCEDURE.

The Dismissal Order did not accurately reflect the trial court's judgment, set forth on the record in Blodgett I and II and in its minute order to quiet title in the Blodgetts. To correct the error in the Dismissal Order, the Blodgetts served Betty Purcell and filed on March 17, 1986 a Motion to Set Aside Order of Dismissal and Enter Judgment of Quiet Title pursuant to Rule 60(a) of the Utah Rules of Civil Procedure, which provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

In Stanger v. Sentinel Sec. Life Ins. Co., 669 P.2d 1201, 1206 (Utah 1983), this Court construed Rule 60(a), defining

a clerical mistake as one which is mechanical in nature, is apparent on the record and does not involve a legal decision or judgment by an attorney. The distinction between a judicial error and a clerical error does not depend upon who made it; rather, the distinction depends on whether it was made in rendering the judgment (judicial error) or in recording the judgment as rendered (clerical error). See Richards v. Siddoway, 24 Utah 2d 314, 471 P.2d 143, 145 (1970). Corrections contemplated by Rule 60(a) must be undertaken for the purpose of reflecting the actual intention of the court and the parties. See Lindsay v. Atkin, 680 P.2d 401, 402 (Utah 1984).

Under the criteria set forth in Stanger, Richards and Lindsay, the omission of the quiet title provisions in the Dismissal Order constituted a "clerical error". The error was mechanical in nature, and it occurred in the course of recording a judgment, since the court ordered "quiet title" but the subsequent written judgment neglected to recite those exact words. Making the correction did not involve a legal decision or judgment by an attorney; the correction arose naturally from the plain words of the record when the settlement was approved by Judge Baldwin. That settlement reflected what the Blodgetts had sought all along. The trial court corrected the error on August 13, 1986 to reflect the actual intention of the trial court and

the parties as set forth in the record and the Settlement Order, quieting title to the Store Tract in the Blodgetts as of the date of the settlement.

In Meagher v. Equity Oil Co., 5 Utah 2d 196, 299 P.2d 827 (1956), this Court reviewed a case in which the trial judge signed an order on the erroneous assumption that the order, as prepared by counsel, correctly reflected his judgment in the matter. This Court held that the execution of the order was a mistake of a perfunctory or a clerical nature since the order did not accurately reflect the result of the trial court's judgment and that the trial court could and properly did correct the error upon its own motion.

In Blodgett I and Blodgett II, Judge Baldwin, like the trial judge in Meagher, executed the Dismissal Order on the erroneous assumption that it correctly reflected his judgment, thus making an error perfunctory and clerical in nature and properly correctable by the Blodgetts' Rule 60(a) motion and under the principles announced in Stanger, Richards, Lindsay and Meagher.

CONCLUSION

For the reasons set forth hereinabove, the Court should deny Defendant Betty Purcell's Motion to Set aside Order and Judgment of Quiet Title.

Respectfully submitted this 22nd day of September,
1986.

KIRTON, McCONKIE & BUSHNELL

By: Lester A. Perry
Lester A. Perry
Attorneys for WILLIAM D.
BLODGETT and FLORENCE G.
BLODGETT

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September,
1986, I served a copy of the foregoing Reply Memorandum to The
Motion to Set Aside Order and Judgment of Quiet Title by mailing
a true and correct copy, postage prepaid, to:

James A. Arrowsmith, Esq.
2102 East 3300 South
Salt Lake City, UT 84109

Susan W. Burns

STATE OF UTAH)
COUNTY OF SALT LAKE) 98
I, THE UNDERSIGNED, CLERK OF THE DISTRICT
COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY
CERTIFY THAT THE ANNEXED AND FOREGOING IS
A TRUE AND FULL COPY OF AN ORIGINAL DOCU-
MENT ON FILE IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 14 DAY OF Oct 19 86
H. DIXON HINDLEY, CLERK
BY [Signature] DEPUTY

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

SEP 26 1986

By *[Signature]* Dixon/Hindley, District Court
Duty Clerk

Lester A. Perry - A2571
Robert M. Dyer - A0495
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

BR 209 NO. 3390
10-1-86 - 8:28 AM.

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WILLIAM D. BLODGETT and)
FLORENCE G. BLODGETT, his wife,)

Plaintiffs,)

vs.)

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,)

Defendants.)

ORDER AND JUDGMENT
OF QUIET TITLE

Civil No. 223407 and
C-78-8017 (Consolidated)

Be it remembered that Plaintiffs' Motion To Set Aside Order of Dismissal and Enter Judgment of Quiet Title came for hearing before the Honorable David B. Dee, of the above entitled court on May 2, 1986, at the hour of ten o'clock a.m.

Plaintiff was present by and through it's counsel of record, Mr. Lester A. Perry, of Kirton, McConkie & Bushnell. Defendant, Betty Purcell, aka Betty Purcell Martsch, was not present, either in person or through counsel; said defendant having been previously served with Plaintiffs' Motion and the associated pleadings by personal service on April 1, 1986.

JUDGMENT

The court being fully advised in the premises and having considered the Motion of plaintiff hereby orders, adjudges and decrees:

1. The Order of Dismissal against defendant Betty Purcell, aka Betty Purcell Martsch, signed and entered May 5, 1980 by the Honorable Earnest F. Baldwin Jr., is hereby set aside.

2. Judgment is hereby entered against Betty Purcell, aka Betty Purcell Martsch, quieting Title of all right, title and interest of said defendant within the following identified real property in and to the plaintiffs', William D. Blodgett and Florence G. Blodgett. The real property to which this quiet title judgement applies is located within Salt Lake County, State of Utah, and is more particularly identified as:

Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°20'50" East along center line of Highland Drive 154.0 feet; thence south 89°15'45" West 197.17 feet; thence South 0°17 45" West 154.0 feet to North line of Vine Street (6100 South); thence North 89°15'45" East along said North line 197.03 feet to the point of beginnning.

Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1,

and more particularly described as follows:
Beginning at the intersections of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said Engineer's Station 176+92.29 bearing South 38°54'40" East; thence North 116.0 feet to a point on a 2367.0 foot radius curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.


3. This Order shall relate back to and be effective as of May 5, 1980.

4. The Complaint of plaintiffs against defendants Betty Purcell Martsch, Raco Car Wash Systems, Inc., and Water Park Corporation is hereby dismissed with prejudice and any and all counterclaims of said defendants are hereby dismissed with prejudice with the parties to bear their own costs.

5. The sum of \$2,450 on deposit with the court in this case be paid over to plaintiffs by the clerk of the court.

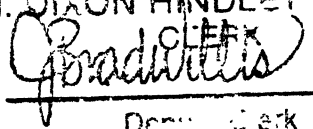
Dated this 26 day of September, 1986.

BY THE COURT:



DAVID B. DEE, District Judge

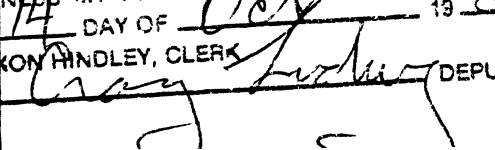
WITEST
H. DIXON HINDLEY
CLERK



by _____
Dennis Clerk

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

I, THE UNDESIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 14 DAY OF Oct 19 86
H. DIXON HINDLEY, CLERK  DEPUTY

-3-

JAMES A. ARROWSMITH #0130
Attorney for Defendant
Betty Pursell
2102 East 3300 South
Salt Lake City, Utah 84109

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his
wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,

Defendants.

NOTICE OF APPEAL

Civil No. 223407 and
C-78-8017 (Consolidated)

JUDGE DAVID B. DEE

Defendant Betty Pursell hereby appeals to the Utah Supreme Court from that Amended Order and Judgment of Quiet Title entered on August 13, 1986 and the Order and Judgment of Quiet Title entered on September 26, 1986 in the above-referenced action by the Third Judicial District Court, the Honorable David B. Dee presiding, in favor of plaintiffs and against defendants.

DATED this 9th day of October, 1986.

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 10 DAY OF Oct 1986
A. DIXON HINDLEY, CLERK

DEPUTY

James A. Arrowsmith
Attorney for Defendant
Betty Pursell

N

JAMES A. ARROWSMITH #0130
Attorney for Defendant
Betty Pursell
2102 East 3300 South
Salt Lake City, Utah 84109

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

OCT 14 5 09 AM '86

H. DIANE H. DEE, CLERK
SALT LAKE COUNTY

BY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his
wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,
DOYLE NEASE, RACO CAR WASH
WASH SYSTEMS, INC., a Utah
corporation, WAYNE A.
ASHWORTH, trustee, CARL W.
TENNEY, VALLEY BANK & TRUST
COMPANY, and FIRST SECURITY
BANK OF IDAHO, N.A.,

Defendants.

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT,

Plaintiffs,

vs.

BETTY PURCELL aka BETTY
PURCELL MARTSCH and WATER
PARK CORPORATION, a Utah
corporation,

Defendants.

AMENDED
NOTICE OF APPEAL

Civil No. 223407

Civil No. C-78-8017

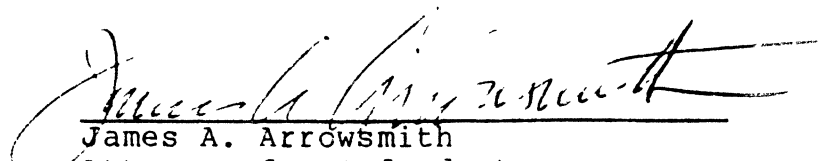
(Consolidated)

JUDGE DAVID B. DEE

Defendant Betty Pursell hereby appeals to the Utah
Supreme Court from that Amended Order and Judgment of Quiet

Title entered on August 13, 1986 and the Order and Judgment of Quiet Title entered on September 26, 1986 in the above-referenced consolidated cases by the Third Judicial District Court, the Honorable David B. Dee presiding, in favor of plaintiffs and against defendants. The above-referenced cases were consolidated by the Third Judicial District Court by Order entered April 11, 1979.

DATED this 21st day of October, 1986.


James A. Arrowsmith
Attorney for Defendant
Betty Pursell

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of October, 1986 I delivered a copy of the foregoing Notice of Appeal by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Lester A. Perry
Robert M. Dyer
KIRTON, McCONKIE & BUSHNELL
330 South Third East
Salt Lake City, Utah 84111

James L. Cunningham

STATE OF UTAH)
COUNTY OF SALT LAKE) ss
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT TO BE FILED IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 17 DAY OF Oct 19 86
H. DIXON HINDLEY, CLERK
BY *[Signature]* DEPUTY

ASSIGNMENT OF JUDGMENTS

FOR GOOD AND VALUABLE CONSIDERATION, STANLEY L. PACE and ALLAN D. McCOMB, doing business as ALCO INVESTMENT, a Utah general partnership, by Allan D. McComb hereby assign all of their right, title and interest in the following judgments to themselves, STANLEY L. PACE and ALLAN D. McCOMB, as tenants in common:

(1) Judgment dated May 16, 1979 in the Third Judicial District Court of Salt Lake County, State of Utah, in the matter entitled Zions First National Bank v. Betty Pursell Alexander aka Betty Pursell Martsch, Civil No. C79-1685; and

(2) Judgment dated June 2, 1979 in the Third Judicial District Court of Salt Lake County, State of Utah, in the matter entitled Zions First National Bank v. Betty Pursell Alexander and Lorin N. Pace, Civil No. 232782.

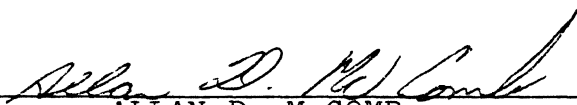
DATED this 19 day of October, 1986.

ALCO INVESTMENT

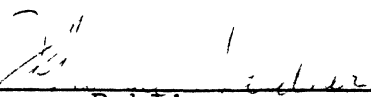
By 
ALLAN D. McCOMB, Partner

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

ALLAN D. McCOMB being first duly sworn states that he is one of the partners of ALCO INVESTMENT and that he signed the above Assignment of Judgments on behalf of said partnership.


ALLAN D. McCOMB

SUBSCRIBED AND SWORN to before me this _____ day of October, 1986.


Notary Public

My Commission Expires:

Residing at: Salt Lake County, UT
