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Douglas A. Nelson v. Michelle Marion Davis : Brief of Respondent

Utah Supreme Court

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of the Third Judicial District
The Honorable

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DOUGLAS A. NELSON,

Plaintiff-Respondent

vs.

MICHELLE MARION DAVIS,
et al.,

Defendant-Appellants

No. 15659

RESPONDENT'S BRIEF

Appeal from a Judgment
of the Third Judicial District Court of Salt Lake County
The Honorable James S. Sawaya, Judge

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under which they purportedly claimed an interest were declared of no legal effect and void. It was also held that plaintiff-respondent was entitled to immediate possession of said property.

RELIEF SOUGHT ON APPEAL

Plaintiff-respondent requests that the Supreme Court affirm the judgment of the District Court.

STATEMENT OF THE FACTS

Sixteen years before the present litigation began, plaintiff-respondent acquired a home at 3061 Canyon View Circle, Salt Lake City, Utah, with his first wife who is now deceased. The home was paid for from the earnings of plaintiff-respondent since its purchase, and upon the death of the first wife the joint tenancy was dissolved, and plaintiff-respondent became the sole owner of the property (R.P. 110-111).

On March 11, 1976, plaintiff-respondent married defendant-appellants' decedent, Betty N. Nelson. Defendant-appellants' decedent shortly thereafter prevailed upon plaintiff-respondent to make her a joint tenant of the home located at 3061 Canyon View Circle (R.P. 111, 1.8-11). Defendant-appellants' decedent refused to go on vacation with plaintiff-respondent until she was made a joint tenant (R.P. 118, 1.16-20). Upon her continued insistence (R.P. 117, 1. 21-22), plaintiff-respondent as grantor quit-claimed the home to himself and defendant-appellants' decedent as joint tenants on May 13, 1976. Defendant-appellants' decedent did not pay anything for the home (R.P. 115, 1.12-14).

As soon as defendant-appellants' decedent had induced plaintiff-respondent to make her a joint tenant, the marital relationship deteriorated rapidly (R.P. 118).

In late May or June of 1976 plaintiff-respondent contacted his attorney regarding a divorce (R.P. 118, 1.24-25). In July, 1976, plaintiff-respondent decided to go ahead with the divorce, but defendant-appellants' decedent talked him out of it (R.P. 118, 1.25-28). Plaintiff-respondent had considered divorce before he was aware that defendant-appellants' decedent had terminal cancer (R.P. 118, 1.27-29). His reason for filing the divorce had nothing to do with her illness (R.P. 119, 1.1-2). The divorce was commenced in September, 1976, and the Complaint was filed on October 4, 1976, less than six months after plaintiff-respondent and defendant-appellants' decedent were married.

On October 22, 1976, a hearing was held on defendant-appellants' decedent's Order to Show Cause (R.P. 175). At that hearing, counsel for defendant-appellants' decedent argued for an order that no fixed assets of the parties be allowed to be disposed of or encumbered:

Mr King: My only opinion is that one of the orders of the Court should be that no fixed assets should be disposed of or encumbered.

The Court: I'm not going to decide who has what assets at this time.

Mr. King: I think it would be proper for the Court to enter an order saying in this case the assets in either party's name or the name of her children not be disposed of but be held

in tact until the Court can take a look at the whole thing. (Exhibit P-2, P.5-6)

Based upon the hearing of October 22, 1976, defendant-appellants' decedent was under court order not to convey the property in question to any third party (R.P 179). In spite of the argument of decedent's counsel and in violation of the court's Order, on November 3, 1976, the decedent had a deed prepared that conveyed the property in question to defendant-appellant Michelle Marion Davis (Exhibit D-5). This conveyance was prepared by the attorney for defendant-appellants' decedent during the interim between the hearing and his preparation of the Order for the court's signature. On the same day, decedent had a document drafted entitled "Notice of Termination of Joint Tenancy," that was recorded on November 4, 1976, (Exhibit D-6). Plaintiff-respondent did not give his consent to the decedent to terminate the joint tenancy (R.P. 111, 1.26-30). By this "Notice of Termination," decedent attempted to unilaterally destroy the joint tenancy in the home of which she had induced plaintiff-respondent to make her a joint tenant only six months earlier and of which she had paid nothing for. The purported notice of termination of joint tenancy did not terminate the joint tenancy (R.P. 76, paragraph 5).

During the divorce proceedings, decedent died

on May 24, 1977. On June 2, 1977, plaintiff-respondent filed an Affidavit of Identity with the Salt Lake County Recorder's Office (Exhibit P-4), indicating that the deceased Betty N. Nelson was one of the grantees of the Quit-Claim Deed creating the joint tenancy between plaintiff-respondent and Betty N. Nelson. By the recordation of said Affidavit of Identity the said Betty N. Nelson having died, plaintiff-respondent became the sole and legal owner of the property in question (R.P. 76-77, paragraph 7). As the sole and legal owner of the property, plaintiff-respondent attempted to obtain possession of the premises. Plaintiff-respondent was prevented from obtaining possession, however, by the refusal of defendant-appellant Michelle Marion Davis to leave the premises. Defendant-appellant Michelle Marion Davis, a daughter of the decedent, had been living in the home at the time of the decedent's death.

About this same time, the deed dated November 3, 1977, from the decedent to defendant-appellant Davis was recorded in the Salt Lake County Recorder's Office on June 3, 1977 (Exhibit D-5), ten days after the decedent's death. At the trial there was no evidence of the delivery of the deed and on that basis the purported conveyance was determined to be invalid (R.P. 76, paragraph 4).

In addition to refusing to leave the property of plaintiff-respondent, defendant-appellant Davis neither

paid anything for the use of the premises nor took care of it. The lawn, shrubbery, and trees were allowed to die (Exhibit 1-P). Garbage accumulated in the house and yard. Drapes and other items were destroyed or ruined (R.P. 113-114).

After numerous requests by plaintiff-respondent to move into his legally owned home and numerous refusals by defendant-appellant to let him, plaintiff-respondent filed the present action to remove defendant-appellant Davis from his property and to recover damages for the destruction done.

ARGUMENT

I. DEFENDANT-APPELLANTS' DECEDENT DID NOT AND COULD NOT DESTROY THE JOINT TENANCY WITH PLAINTIFF-RESPONDENT BY RECORDING A NOTICE OF TERMINATION OF JOINT TENANCY

The issue in this case is whether defendant-appellants' decedent, who induced plaintiff-respondent to make her a joint tenant and who did not contribute anything to the joint tenancy in question, can unilaterally destroy the joint tenancy by the mere act of making and recording a Notice of Termination of Joint Tenancy.

Both reason and the authorities dictate that defendant-appellants' decedent could not destroy the joint tenancy by this means. Indeed, what defendant-appellants' decedent unsuccessfully attempted was neither legally permissible nor equitably proper. The cases uniformly hold that absent a legal and valid conveyance to a third party during a joint tenant's lifetime, the joint tenancy can only be destroyed by the mutual consent of all of the joint tenants. See Carson v. Ellis, 186 Kan. 112, 348 P.2d 807 (1960); Federal National Mortgage Association v. Elliott, 1 Kan.App. 2d 366, 566 P.2d 21 (1977).

Since defendant-appellants' decedent was restrained from transferring the property to third persons

the only way she could destroy the joint tenancy was by obtaining the consent of the plaintiff-respondent, the other joint tenant. Such consent was never given. Faced with the problem of not being able to legally terminate the joint tenancy by conveyance or consent, defendant-appellants' decedent attempted to terminate it by notice.

The Court of Appeal of California in Clark v. Carter, 265 Cal.App.2d 291, 70 Cal.Rptr. 923 (1968), dealt with a case similar to the present action. There, a wife who held real property in joint tenancy with her husband, tried to convey it from herself as joint tenant and grantor to herself as a grantee and tenant in common. The wife's theory was that since the joint tenancy may be created by one sole owner granting to himself and another, a joint tenancy should also be terminable by a transfer by one joint tenant to himself as a tenant in common. The court rejected this theory and held that a joint tenancy "could not be terminated by the mere expedient of transferring title to one's self." The court declared the wife's conveyance void as being in derogation of both the common law and California statutory law.

In Newman v. Youngblood, 394 Ill. 617, 69 N.E. 2d 309 (1946), the Supreme Court of Illinois decided a

case directly in point with the present action. In that case, Charles D. Youngblood and May R. Youngblood had an attorney prepare joint tenancy deeds to their respective properties, both having owned real property acquired during prior marriages. The deeds were executed and delivered to be held by the attorney who drew them. Shortly thereafter the Youngbloods experienced marital difficulties and separated. At that time Mrs. Youngblood wrote the attorney who drafted the joint tenancy deeds, requesting that he consider the deeds void and not record them. Mrs. Youngblood thereafter by will attempted to distribute the joint tenancy property to other family members to the exclusion of her husband, the surviving joint tenant.

The Supreme Court of Illinois in finding that the joint tenancy had not been terminated by the unilateral declaration of Mrs. Youngblood, held that where the husband and wife place their realty in joint tenancy, the wife's subsequent change of mind and desire to terminate the agreement to place the realty in joint tenancy, could only be consummated by the mutual consent of both husband and wife.

It is clear from the above cited cases that the unilateral action of defendant-appellants' decedent did not terminate the joint tenancy with plaintiff-

respondent. Since the joint tenancy was not terminated, plaintiff-respondent became the sole owner of the property in question as the surviving joint tenant.

II. THE ORDER GRANTING DEFENDANT-APPELLANTS' DECEDENT THE RIGHT TO CONVERT THE JOINT TENANCY TO TENANCY IN COMMON, IF THERE WAS SUCH A RIGHT, BECAME A NULLITY UNDER DALY

Prior to the conclusion of the divorce proceeding between defendant-appellants' decedent and plaintiff-respondent, the decedent died, thereby terminating the divorce proceeding and setting at naught orders or the like relative to the disposition of the property entered in that case. See Daly v. Daly, 533 P.2d 884 (Utah 1975). During the lifetime of defendant-appellants' decedent, she was under a court order dated October 22, 1976, not to convey the property to any third person. She was given, however, the right to convert the joint tenancy to a tenancy in common. As previously discussed, the only way defendant-appellants' decedent could have converted the joint tenancy (since she could not convey it to a third party) was to obtain the consent of plaintiff-respondent. This was never done.

Even assuming that defendant-appellants' decedent had a right to convert the joint tenancy to a tenancy in common by some method other than conveyance or consent, based upon this Court's reasoning in Daly,

that right died with the decedent. Defendant-appellants' brief fails to distinguish the reasoning of the Daly case from the present action.

III. THE DEED FROM DECEDENT TO DEFENDANT-APPELLANT DAVIS FAILED TO CONVEY THE PROPERTY IN QUESTION SINCE THERE WAS NO DELIVERY DURING DECEDENT'S LIFETIME

The courts have repeatedly held that before a deed can operate as a valid transfer of title there must be delivery of the instrument and such delivery must be effected during the lifetime of the grantor. See McLaws v. Casey, 88 Idaho 348, 400 P.2d 386 (1965); Newman v. Youngblood, 394 Ill. 617, 69 N.E. 2d 309 (1946).

The deed purportedly conveying decedent's interest to defendant-appellant Davis was signed on November 3, 1976. This was in violation of an order restraining the decedent from conveying the property in question to any third parties. The decedent died on May 24, 1977, never having delivered the deed to defendant-appellant Davis. It was not until June 3, 1977, that the deed was recorded.

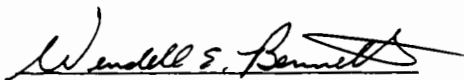
Since there was no evidence of delivery of the deed in which the decedent had purported to convey the property in question to defendant-appellant Davis, and since decedent was restrained from making a convey-

ance, the trial court ruled that the conveyance was invalid at the time it was made and therefore set the conveyance aside. This ruling was proper and should be affirmed.

CONCLUSION

It is respectfully submitted that the decision of the trial court be affirmed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Wendell E. Bennett". The signature is written in dark ink and is positioned above a horizontal line.

Wendell E. Bennett

DELIVERY CERTIFICATE

I certify that I delivered 11 copies of the Respondent's Brief to the Clerk of the Supreme Court, on the 18 day of July, 1978, and I delivered 2 copies to Samuel King, attorney for the appellant, at 409 Boston Building, Salt Lake City, Utah.

Tom King

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