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Zella B. Wakefield v. Ivan L. Ballard et al : Brief of Appellant

Utah Supreme Court

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In the Supreme Court of the State of Utah

ZELLA B. WAKEFIELD, as Adminis-
tratrix of the Estate of Lucinda A.
Ballard, deceased,

Plaintiff and Appellant,

vs.

IVAN L. BALLARD, STERLING
BALLARD, ROSAMOND BAL-
LARD, MABEL BALLARD, surviv-
ing widow of Melvin Ballard, de-
ceased, and HOWARD BALLARD,
RALPH BALLARD, F. M. BAL-
LARD, MARIE BALLARD DAVIS,
LOUISE BALLARD BARNEY,
BERNIECE BALLARD DAVIS, and
MARGARET BALLARD TAYLOR,
sons and daughters of the said Melvin
Ballard, deceased, and JEANETTE
S. BALLARD, Administratrix of the
estate of Leland B. Ballard, deceased,

Defendants and Respondents.

No. 7381

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In the Supreme Court of the State of Utah

ZELLA B. WAKEFIELD, as Administratrix of the Estate of Lucinda A. Ballard, deceased,

Plaintiff and Appellant,

vs.

IVAN L. BALLARD, STERLING BALLARD, ROSAMOND BALLARD, MABEL BALLARD, surviving widow of Melvin Ballard, deceased, and HOWARD BALLARD, RALPH BALLARD, F. M. BALLARD, MARIE BALLARD DAVIS, LOUISE BALLARD BARNEY, BERNIECE BALLARD DAVIS, and MARGARET BALLARD TAYLOR, sons and daughters of the said Melvin Ballard, deceased, and JEANETTE S. BALLARD, Administratrix of the estate of Leland B. Ballard, deceased,

Defendants and Respondents.

No. 7381

BRIEF OF APPELLANT

This suit was instituted in the District Court of the Fourth Judicial District in and for Utah county, State of Utah, by the Administratrix of the Estate of Lucinda A. Ballard, deceased, to set aside three deeds executed by the said Lucinda A. Ballard during her lifetime to her three sons, on the ground of fraud. The defendants filed a general denial and pleaded the affirmative defenses of the Statute of Limitations and the Statute of Frauds. The Court entered a decree in favor of the defendants.

STATEMENT OF FACTS

Francis M. Ballard and Lucinda A. Ballard were husband and wife residing in Payson, Utah County, State of Utah, and were the parents of the following named sons and daughters, to-wit:

Ivan L. Ballard	Myrtle Denhalter
Melvin Ballard	Leah B. Ericksen
Leland B. Ballard	Zella May Wakefield
Izetta B. Kapple Hill	Eva Ireta Martin

(Tr. 10, 11)

On the 30th day of January, 1927, Francis M. Ballard died intestate leaving as his heirs at law, his wife, Lucinda A. Ballard, who at the time was seventy-one years of age, and the aforementioned sons and daughters. (Plaintiff's Exhibit — Probate file No. 4426). Petition for Letters of Administration was filed on the 30th day of August, 1927, praying for the appointment of Ivan L. Ballard and Leland B. Ballard, two of the sons of the decedent, to act as administrators (Tr. 98). Only Leland B. Ballard qualified as the administrator through-

out the probate proceeding. (Plaintiff's Exhibit—Probate File No. 4426—Tr. 4, 13, 52, 60, 98, 103).

Immediately after the funeral of Francis M. Ballard, a meeting of all the sons and daughters of the decedent was held in the home of their mother, Lucinda A. Ballard, at the family residence in Payson, Utah. (Tr. 10, 11, 14, 15, 32, 49, 58, 77). This conference among the heirs, including Lucinda A. Ballard, was for the purpose of deciding how best an adequate income could be provided for their mother, Lucinda A. Ballard, from the assets of their father's estate (Tr. 12, 16, 32, 33, 59).

The home property situated in Payson, Utah County, Utah, was in the name of Lucinda A. Ballard prior to the death of her husband and hence was not involved as an asset in the probate of the Estate of Francis M. Ballard.

The sons and daughters, at this conference, mutually agreed that all of the real property which their father died possessed of should be quit-claimed by each of the heirs to their mother, Lucinda A. Ballard, and that she should use, occupy, and derive the benefits of this property, together with the home property then standing in her name, during her lifetime, and at her death all of the property would pass to her estate to be distributed equally to the sons and daughters, share and share alike (Tr. 13, 25, 29, 33, 46, 50, 59, 62, 78).

Thereafter, and in the summer of 1929, each of the sons and daughters executed quit-claim deeds conveying their respective interest in their father's estate to their mother, Lucinda A. Ballard, thereby confirming the course of action agreed

upon at the aforementioned conference, and for the welfare and best interests of their mother —(Probate File No. 4426—Tr. 13, 14, 25, 26, 27, 29, 33, 36, 38, 39, 59, 60, 64). These quit-claim deeds were prepared by R. A. Porter, Attorney for the Estate of Francis M. Ballard, deceased (Tr. 14, 51).

On the 17th day of August, 1929, the court made and entered a decree distributing all of the property in the estate to Lucinda A. Ballard in accordance with, and in harmony with, the agreement of the sons and daughters and the quit-claim deeds executed by them, and in accordance with the final account and petition for distribution filed by Leland B. Ballard, administrator of the estate (Probate File No. 4426).

However, after the quit-claim deeds of the heirs had been signed and after the entry of the Decree of Distribution in the probate proceedings, the three sons, Leland B. Ballard, Melvin Ballard and Ivan L. Ballard took possession of the properties, managed the same, and thereafter received all incomes from the properties (Tr. 20, 52, 53, 54, 55, 98, 99). Lucinda A. Ballard continued to occupy and maintain her residence at the home property which she and her deceased husband had acquired through a long lifetime of joint effort.

Sometime in 1936 or 1937, the three sons, Leland, Melvin and Ivan prevailed upon their aged mother to go to the office of her attorney, R. A. Porter, in Payson, Utah, and there sign three instruments purporting to be deeds of conveyance (Tr. 22, 23, 28, 47, 69, 70 and 86). One deed named Leland B. Ballard as grantee and described the home property of his mother, Lucinda A. Ballard, which property is more specifically described as follows:

Commencing at the Northwest Corner of Lot 3 in Block 8 of Plat "K" in Payson City Survey of Building Lots; thence East 214.50 feet; thence South 198 feet; thence West 214.50 feet; thence North 198 feet; to the place of beginning. Together with the improvements thereon.

This deed was dated September 19, 1936, and recorded September 30, 1936, in Book No. 331, page 299 at the Utah County Recorder's office.

The second of these deeds named Melvin Ballard as grantee and covered the "Nebeker property" which was a part of the real estate owned by the estate of Francis M. Ballard, deceased, included in the quit-claim deeds of the heirs and specifically described as follows, to-wit:

Commencing 75 feet South from the Northwest Corner of Block 23, Plat "Q" Payson City Survey of Building Lots; thence South with line of Block 139.5 feet; thence East 462 feet; thence North with line of Block 139.5 feet; thence West 462 feet to the place of beginning.

ALSO: All of Lot 1, in Block 37 of Plat "A," Payson City Survey of Building Lots.

This deed was dated April 28, 1937, and recorded November 22, 1937, in Book 337 at page 8 in the Utah County Recorder's office.

The other of these three deeds named Ivan L. Ballard as grantee and purported to convey the "farm property" which was a part of the real estate owned by the estate of Francis M. Ballard, was included in the quit-claim deeds executed by the sons and daughters to their mother, and more specifically described as follows, to-wit:

Commencing 6.53 chains North and $3.80\frac{1}{2}$ chains South $88^{\circ}45'$ East from the Southwest Corner of the Southeast Quarter of Section 10, Township 9 South, Range 2 East of the Salt Lake Base and Meridian; thence South $88^{\circ}45'$ East 4.945 chains; thence North $1^{\circ}15'$ East 9.90 chains; thence North $88^{\circ}15'$ West 4.945 chains; thence South $1^{\circ}15'$ West 9.90 chains to the place of beginning, Area 4.90 acres.

Also commencing 16.43 chains North and 4.00 chains South $88^{\circ}45'$ East from the Southwest Corner of said Quarter of Section; thence South $88^{\circ}45'$ East 4.94 chains; thence North $1^{\circ}15'$ East 9.90 chains; thence North $88^{\circ}45'$ West 4.94 chains; thence South $1^{\circ}15'$ West 9.90 chains to the place of beginning, Area 4.90 acres.

Also commencing 26.33 chains North from the Southwest Corner of the Southeast Quarter of said Section 10, in Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence South 89° East 9.18 chains; thence North $1^{\circ}15'$ East 4.22 chains; thence South $78^{\circ}15'$ West 10.31 chains; thence South 1° West 1.98 chains; thence South 89° East 0.91 chains; to the place of beginning, Area 2.62 acres.

This deed was dated January 30, 1937, and recorded January 10, 1938 in Book No. 337, page 37 in the Utah County Recorder's office.

These three deeds were left in the office of Attorney R. A. Porter by Lucinda A. Ballard and thereafter came into the possession of her three sons who were named as grantees of the properties (Tr. 27, 101). There was no consideration for the purported conveyances (Plaintiff's Exhibit A, page 5). The sons remained in possession of all of the property as tenants and their mother, Lucinda A. Ballard, found it necessary

to seek relief from the State of Utah in order that she might live, as all rentals and proceeds from the property, including her homestead, were being taken and used by her three sons. (Tr. 20, 26, 27, 35, 45, 53, 54, 56, 60, 66, 67, 73, 74, 101 and 110).

During the period from 1932 to 1944 the taxes on the farm and Nebeker properties remained unpaid and the same were sold to Utah County for taxes (Tr. 16, 19, 21, 86, 100, 101). In 1944 these properties were redeemed by Melvin and Ivan and titles taken in the names of their respective immediate families (Tr. 83, 84, 85, 86, 93, 94, 95, 96, 99, 100, 104, and 105—Defendants' Exhibits 3, 4 and 5).

In July, 1943, Lucinda A. Ballard, then 87 years old, commenced suits against her three sons to set aside the deeds, and her deposition was taken (Plaintiff's Exhibit A—Tr. 23, 24). She died while the suits were pending. The plaintiff caused these three suits to be dismissed without prejudice other than upon their merits, and within one year from the date this action commenced. Two of the sons, Melvin Ballard and Leland B. Ballard, died in 1947.

ASSIGNMENT OF ERRORS

1. The court erred in refusing to set aside and annul the deed from Lucinda A. Ballard to Leland B. Ballard, the deed from Lucinda A. Ballard to Ivan L. Ballard and the deed from Lucinda A. Ballard to Melvin Ballard.

2. The court erred in finding that the deeds from Lucinda A. Ballard to her three sons, Leland B. Ballard, Ivan L. Ballard

and Melvin Ballard were executed and delivered of her own free will without any fraud or undue influence.

3. The court erred in refusing to impress a trust upon the properties described in the plaintiff's complaint, in favor of the Estate of Lucinda A. Ballard, deceased.

4. The court erred in decreeing that the plaintiff's cause of action was barred by the Statute of Limitations, Section 104-2-24 (3) U. C. A., 1943, as against the administratrix of Leland B. Ballard and the heirs of Melvin Ballard.

5. The court erred in making and entering a decree in favor of the defendants and against the plaintiff as administratrix of the estate of Lucinda A. Ballard, deceased.

ARGUMENT

I

THE COURT ERRED IN REFUSING TO SET ASIDE AND ANNUL THE DEEDS FROM LUCINDA A. BALLARD TO HER THREE SONS, LELAND, B. BALLARD, IVAN L. BALLARD AND MELVIN BALLARD AND FINDING THAT THESE DEEDS WERE EXECUTED AND DELIVERED OF THE GRANTOR'S OWN FREE WILL WITHOUT FRAUD OR UNDUE INFLUENCE ON THE PART OF THE SONS, THE GRANTEEES.

The evidence unequivocally shows that immediately after the death of Francis M. Ballard, all of his sons and daughters met with their mother at the family home for the purpose of

determining means by which their aged mother could be financially provided for. The real estate left by the decedent consisted of a farm and the "town or Nebeker property" situated in Payson, Utah (Probate File No. 4426). The tract known as the "family home" was in the name of their mother, Lucinda A. Ballard, and not subject to the probate proceeding. The sons and daughters decided a course of action whereby all of the respective interests of each in the estate of their father was to be quit-claimed to their mother, Lucinda A. Ballard, and she in turn would use the property for her needs during her lifetime and thereafter the remainder, including the "home property," would pass to her estate for equal distribution to the sons and daughters, share and share alike. This agreement was amply supported by the consideration of each heir relinquishing his or her interest in their father's estate for the benefit of their aged mother.

It must also be considered that both Ivan and his brother Leland petitioned the court for Letters of Administration and that Leland was duly appointed and acted as the administrator throughout the probate proceeding, and procured the deeds from the heirs.

After the estate was distributed by Decree to their mother, Lucinda A. Ballard, her son Ivan went into possession of the farm property, Melvin took possession of the Nebeker property in Payson City, and eventually the home property was taken over by Leland, who remodeled the house and derived rental therefrom. Thus the aged Lucinda A. Ballard found herself in destitute circumstances, without means for support, and yet the owner of properties from which she was receiving no

benefit, except living quarters in the family homestead. Was it any wonder that she was induced by her three sons to convey the properties to them in return for their assurance that she would be then adequately provided for?

After Mrs. Ballard had complied with the inducements of her three sons by deeding all of her property to them, she found herself betrayed and of necessity sought relief from the State Welfare department. Ivan and Melvin permitted the taxes on the properties to become delinquent.

From this course of events, could it then be concluded that the sons of Lucinda A. Ballard acted in good faith toward their sisters who had mutually agreed with them and their mother as to the disposition of the properties in question. Fraud is a state of the mind and we submit that from the facts at hand, the sons of Lucinda A. Ballard and Francis M. Ballard actively schemed, individually and collectively, with a view to depriving the sisters of a just share in the properties of their father and mother. Their actions were a breach of mutual confidence and the trial court erred in concluding that the deeds from Lucinda A. Ballard to her three sons were executed of the grantor's own free will, without misrepresentation or influence. To hold otherwise would be to invite perpetration of fraud among heirs.

II

THE COURT ERRED IN REFUSING TO IMPRESS A TRUST UPON THE PROPERTIES IN FAVOR OF THE ESTATE OF LUCINDA A. BALLARD, DECEASED, AND

IN MAKING AND ENTERING A DECREE IN FAVOR OF THE DEFENDANTS AND AGAINST THE PLAINTIFF.

It is the appellant's contention (Assignment of Errors Nos. 3 and 5) that the evidence adduced at the trial required that a trust be impressed upon the subject properties by operation of law. To do so would not be violative of the Statute of Frauds as has been held in the recent Utah case of Haws et al. vs. Jensen, 209 P. 2d 229, wherein this court speaking through Justice Wolfe said:

"In this State a trust in real property can be created in two ways: (1) by act or operation of law (2) by deed or conveyance in writing."

The court had before it for interpretation 33-5-1 U.C.A. 1943.
See also:

Barret v. Vickers, 116 P. 2d 772;
Corey v. Roberts, 25 P. 2d 940;
Hansen v. Hansen, 171 P. 2d 392.

A constructive trust is an equitable remedy to prevent unjust enrichment and a court of equity is bound by no unyielding formula; the equity of the course of events must shape the measure of relief. Where undue influence or duress has been employed to obtain a property transfer, a court of equity will compel restoration by means of a constructive trust.

Bogert, Trusts and Trustees, Vol. 3, Sections 471 and 474.

In the instant case, the interests of all the children in the properties of the Estate of Francis M. Ballard, their father, when quit-claimed to their mother carried the condition that

the same would eventually be distributed to them equally if not used by her during her lifetime. The subsequent action of the three sons in prevailing upon their aged mother to convey the properties to them without consideration and in disregard of any interests of their sisters, was a gross fraud and injustice to both Mrs. Ballard and her daughters.

In equity all of the heirs of Francis M. Ballard and Lucinda A. Ballard were tenants in common and hence the payment of taxes by the sons and the taking of tax deeds, inure to the benefit of all as joint owners.

Sperry v. Tolley (Utah) 199 P. 2d 542

This is not a situation whereby the rule of purchaser in good faith for a valuable consideration and without notice can be applied to the acquisition of trust property. As was said in the Utah case of Peterson v. Peterson, 190 P. 2d 135:

"The general rule in regard to the rights of beneficiaries to reclaim trust property is stated in 54 American Jurisprudence, Trusts, Par. 266:

'The right of beneficiary of a trust to reclaim trust property in the hands of a third person or to charge such third person as a constructive trustee is primarily a question of the status of such third person as a bona fide purchaser for value and without notice. Equities of the beneficiary of a trust in the property or funds of the trust are cut off by the trustee's alienation or encumbrance of such trust property or funds to a purchaser for value and in good faith who has no actual or constructive notice of any breach of trust in the alienation or encumbrance, although this does not, of course, deprive the beneficiary of his remedies of enforcing the trust against the proceeds in the hands of

the trustee or against the trustee personally. But to be so protected the purchaser must be both a purchaser for value and a purchaser in good faith, and without notice. Equities are cut off only to the extent that a person taking trust property or funds in good faith has given value.

One who acquires trust property with notice of the breach of trust or who is for any other reason not a purchaser in good faith is not protected as against equities of the beneficiary, but takes the property or funds charged or impressed with the trust, notwithstanding he gives full value in the transaction. On the other hand, one who has taken in good faith and without notice of any breach of trust is not protected if he gave no value. The purchaser, to be protected, must be a bona fide purchaser, not only at the time of the contract or conveyance, but until the purchase money is actually paid.' "

Under the facts, we submit, that equity demands the imposition of a trust in the property in favor of the plaintiff as administratrix of the estate of Lucinda A. Ballard, deceased, to thereby insure equitable distribution of the properties to all of the heirs of the children of Lucinda A. and Francis M. Ballard.

III

THE COURT ERRED IN DECREERING THAT THE PLAINTIFF'S CAUSE OF ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS, SUBSECTION 3, 104-2-24, U.C.A., 1943, AS AGAINST THE ADMINISTRATRIX OF LELAND B. BALLARD AND THE HEIRS OF MELVIN BALLARD.

It is the appellant's contention that the statute of limitations, sub-section 3, 104-2-24 U.C.A., 1943, is in no way involved or applicable in this instance. To so hold disregards the facts of the case. The sons and daughters of Lucinda A. Ballard had no rights in the properties quit-claimed to their mother so long as she lived, as the very purpose of their deeds was to insure adequate means for her support. She could use the properties as she saw fit during her lifetime or even dispose of them if necessary for her welfare. Her three sons were either in actual possession or managing the affairs of the properties from the time of her husband's death, and this fact would be no indication to the daughters that their brothers were fraudulently intending to deprive them of their rights by securing conveyances to themselves without consulting them. When this scheme became apparent to Lucinda A. Ballard, she filed suit to recover the properties as the consideration for the conveyance to her sons had failed and these suits were pending at the time of her death.

The sons were to participate equally as beneficiaries with their sisters in any assets left in the estate of their mother upon her death. Hence, a cause of action could not possibly accrue to the sisters until their mother's death and as their brothers were to participate equally with them in any residue of the estate, the real party in interest to recover the properties would be the administratrix of the estate of Lucinda A. Ballard.

The obligations of the sons in joining in the giving of deeds to their mother immediately after the death of their father were twofold. First, it was their duty to permit their mother to have the income from the property during her life,

and to dispose of the principal if necessary for her maintenance and support, and secondly, to permit of the distribution of the estate under the laws of inheritance after her death. It was not until after the death of their mother, that the heirs, through an administrator, could assert their rights to a distribution of the property under the laws of inheritance and hence the statute of limitations could not have begun to run until after the death of Mrs. Ballard, insofar as the factual situation herein presents itself.

CONCLUSION

In conclusion we desire merely to say that the question of security of titles is not involved in this case. The law clearly supports the contentions of the appellant as heretofore discussed and we submit that the aquities are in her favor. The decree of the lower court should be reversed.

Respectfully Submitted,

SKEEN, BAYLE & RUSSELL,

Attorneys for Plaintiff and Appellant