

1978

Sandra D. Funk and Robert A. Young v. William R. Young : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SANDRA D. FUNK and
ROBERT A. YOUNG,

Plaintiffs and Appellants, :

vs. :

WILLIAM R. YOUNG,

Defendant and Respondent. :

Supreme Court No.

15,937

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BRIEF OF APPELLANTS

An appeal from the Judgment of the Third Judicial
District Court in and for Salt Lake County, Utah

Honorable David K. Winder, Judge

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Appellants

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BRIEF OF APPELLANTS

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NATURE OF THE CASE

This is an action for judicial sale of real property located in Salt Lake County, under the partition statute or equity jurisdiction, and for a division of the proceeds, with provision made for the life tenant, who has joined with a remainderman as plaintiffs.

DISPOSITION IN THE LOWER COURT

The lower court dismissed the complaint on defendant's Motion to Dismiss for failure to state a claim upon which relief may be granted.

THE NATURE OF RELIEF SOUGHT ON APPEAL

Plaintiffs-Respondents request this Court to reverse

the trial court and to permit the matter to proceed.
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STATEMENT OF FACTS

There being no transcript or evidence taken, and the matter having been determined from a review of the verified complaint, the statement of facts consists of a review of the verified complaint and the Decree recited therein previously entered in Probate No. 56044, Third District Court, Salt Lake County, in the Matter of the Estate of Stella J. Young, Deceased. The facts are set forth in numbered paragraphs to aid in reference.

1. In a probate decree for the Estate of Stella J. Young, deceased, her children, plaintiff Sandra D. Funk and defendant William R. Young, were granted a remainder interest as tenants in common of a home located in Salt Lake City. The decree also provided that plaintiff Robert A. Young was to have a life estate in the home, subject to his personally residing at the home, and to his repair and maintenance of the premises and his paying the utilities, taxes, and special assessments.

2. The parties are adults, and except for the life estate in the home, plaintiff Robert A. Young, a spendthrift, received nothing more from the estate, the balance being divided equally to plaintiff Sandra D. Funk and defendant William R. Young.

3. In order to utilize the home, plaintiff Sandra D. Funk has expended some \$5,000 on permanent improvements, and to assist her brother Robert, she has paid the expenses for maintaining the home. However, she does not have the necessary funds to bring the home up to reasonable insulation standards to reduce the rising utility costs to utilize the home.

4. The value of the property at the time of the probate was listed in the appraisal in July, 1971, as \$7,500. The value of the property at the time of the filing of the complaint was \$40,000, net proceeds from the sale of the same, based upon an offer to purchase received in November, 1977, including the improvements made by Sandra D. Funk, and acquiesced in by defendant William R. Young.

5. There are no liens or obligations against the property.

6. Plaintiff Sandra D. Funk desires to sell the home and purchase a more suitable residence for plaintiff Robert A. Young, in which he would receive a life estate similar to that he currently enjoys from his mother's estate. Defendant William R. Young has refused to cooperate in the sale of the home and to accept an adjusted payment for his vested remainder interest.

7. Since the property consists of a house and a

lot, partition of the property, taking into account the life estate, would not be possible.

8. The prayer for relief sought an order of the Court for sale of the property through a referee, and for an apportionment of the proceeds, taking into account the improvements paid for by plaintiff Sandra D. Funk, and taking into account the remaining value of the life estate, and with payment of the adjusted portions to defendant and plaintiff Sandra D. Funk, with the restriction on the plaintiff's proceeds that the same be used to purchase a suitable habitation for the plaintiff Robert A. Young, which contains a life estate as provided in the original probate decree.

ARGUMENT

POINT I. PLAINTIFFS' COMPLAINT STATES A CAUSE OF ACTION UNDER THE UTAH PARTITION STATUTE.

The Utah partition statute provides as follows:

78-39-1. When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners.

The parties to this action are the sole owners of the property. The life tenant, subject to defeasance for failure to meet conditions of paying taxes, residing in the home, maintaining and repairing the same, and paying any assessments, during his tenancy, meets the requirements of the statute. The two remaindermen are vested and shall receive the property upon failure of the life estate, hence they meet the requirements of the statute.

The trial court indicated that the difficulty with the plaintiffs' position is that the remaindermen are not in possession, and thus may not maintain any cause under the partition statute.

This Court has not specifically defined the meaning of the words "in possession". However, it has ruled, in Larsen v. Daynes, 102 Utah 312, 133 P.2d 785 (1943), reversing 102 Utah 305, 122 P.2d 429 (1942), that:

The court has power to partition, sell or settle the respective property rights of persons interested in real property. Sec. 104-58-1 et seq., R. S. U. 1933. [Sec. 104-58-1, R.S.U. 1933, is identical with present partition section 78-39-1, cited above.]

Id., at 315.

In the Larsen case the Court overruled a demurrer (motion to dismiss for failure to state a claim) to a complaint

requesting partition or sale of the plaintiff's property because he could not transfer the same as it was encumbered by a contingent interest in plaintiff's divorced spouse of 1/3 of the plaintiff's property if she survived him.

In the instant case, the plaintiff Robert A. Young, has a possessory estate, a life estate, and is in fact in possession. The estates of Sandra D. Funk and William R. Young are estates of inheritance, are vested, are alienable, and enjoyment is merely postponed until the death of William R. Young, or sooner if he fails to meet the other contingencies. These remainder estates were vested, estates permitted at common law as remainder interests until the Statute of Uses permitted executory interests, such as the contingent remainder terminated in the Larsen case.

The language of the partition statute provides for partition, inter alia, where joint tenants, in possession, in which one or more of them have an estate of inheritance, have the property interest. However, at common law, joint tenancy is not an "estate of inheritance". See Babbitt v. Day, 5 A. 275, 276, 41 N.J.Eq., 14 Stew. 392. On the other hand, a vested remainder after a life

estate is an "estate of inheritance." See Brown v. Fidelity Union Trust Co., 9 A.2d 311, 327, 126 N.J.Eq. 406 (1939); and Bunting v. Speek, 21 P. 288, 290, 41 Kan. 424, 3 L.R.A. 690 (1889), citing Smith v. West, 103 Ill. 332. Thus it would appear that the statute is at best ambiguous.

The one argument which would be most persuasive against allowing this partition suit to proceed would be if the remaindermen attempted to defeat the life estate of the life tenant in possession. However, in the instant case, the life tenant in possession has joined as plaintiff to effect sale and distribution of the property, thus avoiding the argument that a possessory interest has been improperly disturbed. See, e.g., Ripp v. Ripp, 314 N.Y.S.2d 461, 463, 64 Misc.2d 323 (1970), wherein the court denied partition to an out of possession remainderman ex-husband who attempted to defeat the possession of the life tenant former spouse. However, in the Larsen case, this Court permitted such partition or sale where initiated by the estate holder in possession.

POINT II. EQUITY PERMITS PARTITION OR SALE
IF THERE IS NO LEGAL REMEDY.

In the event this Court is constrained to hold that the Utah statute on partition does not allow for

the relief sought in plaintiffs' complaint, the chancery courts would have allowed such relief, and under its equity jurisdiction, the lower court could have provided the relief prayed for in the complaint.

In the concurring opinions to the Larsen case it was stated as follows:

I think our statute on partition was not intended to so circumscribe or restrict the remedy that relief cannot be granted under the facts pleaded in this case. See 47 C.J. 338, § 171, and cases there cited. Why should we hold that one who owns and is in possession of a two-thirds interest in property in fee cannot apply to the courts to partition the property as against one who holds a contingent remainder in the other one-third interest? I think the chancery courts would have granted partition in such cases and that our statute was not intended to diminish or restrict the right as recognized by the chancery courts. The use and improvement of real estate is too vital to the public welfare to be hampered by rules or restrictions which have no foundation in justice or sound public policy. . . .

Id., at 317, Hoyt, D.J., concurring.

In addition to the equitable considerations, this situation was created through a will and an order of the probate division of court. It would be reasonable for the court to continue supervision over the property left to a spendthrift, and to retain jurisdiction for that purpose. The unreasonable refusal of a remainderman, joint

heir to release his interest for a fair payment in order to facilitate justice, should be sufficient grounds to permit the court to exercise its jurisdiction.

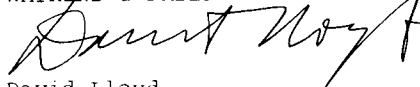
CONCLUSION

The complaint herein states a cause of action under several different theories. One avenue for relief in this matter for the plaintiff Sandra D. Funk, is to persuade her brother, plaintiff Robert A. Young, to move out of the house, thus terminating the life estate from failure of a condition. At that point, she could then commence an action because she would be a tenant in common with her brother, defendant William R. Young. This would leave plaintiff Robert A. Young without a fair remedy and would disinherit him from his mother's estate. It cannot be that the courts must insist that he risk his sister's good graces to provide for him and abandon his inheritance because the courts would not respond to his plea.

DATED this 1st day of September, 1978.

Respectfully submitted,

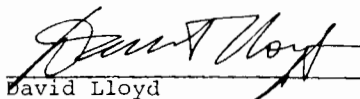
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CERTIFICATE OF SERVICE

I hereby certify that I mailed two copies of appellants' brief to Franklin P. Andersen, attorney for Respondents, 225 South Second East, Suite 200, Salt Lake City, Utah 84111, postage prepaid, this 7th day of September, 1978.



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