

1978

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

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,

Supreme Court No.

Plaintiffs and Appellants, : 15,937

vs.

WILLIAM R. YOUNG,

Defendant and Respondent. :

---oooOooo---

BRIEF OF RESPONDENT

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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Clork, Supreme Court Utah

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AUTHORITIES CITED

Statute:

Utah Code Annotated Section 78-39-1 (1953) 3

Cases:

Larsen v. Daynes, 102 Utah 312, 133 P.2d 785 (1943)
reversing 102 Utah 305, 122 P.2d 429 (1942). 4

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	:	
WILLIAM R. YOUNG,	:	
	:	
Defendant and Respondent.	:	

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BRIEF OF RESPONDENT

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NATURE OF THE CASE

Plaintiffs - Appellants filed an action for partition, Judicial sale, and division of the proceeds of such sale, of a certain parcel of real property located in Salt Lake City, Utah. By their Complaint, plaintiffs seek to compel the defendant to sell his interest in said real property.

DISPOSITION IN THE LOWER COURT

The Third District Court, Judge David K. Winder, dismissed plaintiffs' Complaint upon defendant's Motion for failure to state a claim upon which relief could be granted.

THE NATURE OF RELIEF SOUGHT ON APPEAL

The Defendant-Respondant seeks to have the lower court's disposition of the matter affirmed, and to be

STATEMENT OF FACTS

The salient facts herein may be gleaned from Appellants' Brief as follows:

1. The parties are the exclusive owners of various legal interests in a parcel of real property including a home located in Salt Lake City.

2. The parties inherited their respective interests in said property from their mother, Stella J. Young about nine years ago.

3. Plaintiff Robert A. Young holds a life estate subject to several conditions subsequent, to-wit:

(a) Personal residence in the premises,

(b) Personal responsibility for repair and reasonable maintenance of the premises, and

(c) Personal responsibility for payment of utilities, taxes and special assessments.

Plaintiff Sandra D. Funk and Defendant William R. Young, hold, as tenants-in-common, equal shares of the remainder.

4. Plaintiffs desire to sell the property. The defendant does not.

5. Plaintiffs filed suit to compel Defendant to sell his remainder interest. The lower court dismissed the action on the ground that Plaintiffs Complaint failed to state a cause of action upon which relief could be granted.

THE ISSUE

The question at bar is whether the holder of a conditional life estate and a holder of a one-half remainder interest in real property may join to compel the holder of the other one-half remainder, to sell his interest.

ARGUMENT

POINT I. PLAINTIFFS' COMPLAINT FAILS TO STATE A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED 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 language of the statute clearly states the conditions which must apply before an action for partition may be brought. The subject property must be held by several tenants-in-common or joint tenants who are in possession. In the instant case, plaintiff Funk is not "in possession" and neither is defendant Young. And plaintiff Young is neither a tenant-in-common, nor a joint tenant. Clearly,

the conditions for partition as set forth in the statute are not present here, and plaintiffs' Complaint fails thereby to state a cause of action for partition. In Larsen v. Daynes, 102 Utah 312, 133 P.2d 785 (1943), reversing, 102 Utah 305, 122 P.2d 429 (1942), this court permitted partition in an action initiated by a holder of a two-thirds interest in fee who was in possession as against the holder of a one-third contingent remainder interest.

Plaintiffs fail to note the glaring factual differences in the Larsen case and this one. In Larsen, plaintiff was the holder of a fee interest and was in possession. Here however, the plaintiffs hold no interest in fee, and the possessory interest is conditional.

POINT II. PLAINTIFFS' COMPLAINT FAILS TO STATE
A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED
UNDER THE EQUITABLE POWERS OF THE COURT.

Nowhere in Plaintiffs' Complaint do plaintiffs invoke the equitable jurisdiction of the Court. The Complaint contains no hint that plaintiffs have no adequate remedy at law. Indeed, the entire complaint is couched in terms of the Partition Statute.

Plaintiffs, moreover, suggest their own remedy at law in the Conclusion of Appellants Brief (page 9) where it is said....

"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...she could then commence an action [for partition]... "

Thus plaintiffs, by implication, argue in a circle, recognising on one hand that the requirements for partition under the statute are not met, and on the other hand claiming the lower court erred when it recognized the same thing.

CONCLUSION

The lower court decision and Order dismissing plaintiff's complaint should be affirmed. If this Honorable Court reverses the decision below, the effect would be to:

- (a) Declare that the Partition's Statute(UCA 78-39-1) does not mean what it says,
- (b) To substitute a Court's business judgement for that of the defendant, and
- (c) To defeat and invalidate the terms of the parties mother's Will.

DATED this 6th day of October, 1978.

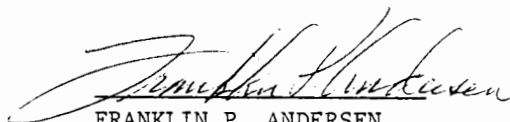
Respectfully submitted,



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Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I mailed two copies of Respondent's Brief to David Lloyd, Watkins & Faber, Attorneys for Plaintiffs-Appellants, 606 Newhouse Bldg. Salt Lake City, Utah 84111 on this 6th day of October, 1978, postage prepaid.



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