

1979

Lola B. Mitchell v. Gary A. Mitchell : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LOLA H. MITCHELL,)	
Plaintiff and)	
Respondent,)	
vs.)	Case No. 16137
GARY A. MITCHELL,)	
Defendant and)	
Appellant,)	

BRIEF OF RESPONDENT

Appeal from the Judgment of the
District Court of Weber County, Utah
Honorable L. Kent Bachman, Judge

C. DeMONT JUDD, JR., ESQ.
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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE
STATE OF UTAH

LOLA H. MITCHELL,)

Plaintiff and)
Respondent,

vs.)

Case No. 16137

GARY A. MITCHELL,)

Defendant and)
Appellant,

STATEMENT OF THE NATURE OF THE CASE

Defendant - Appellant stole his children. In preparation for stealing his children he sold his property, and transferred certain property which was the subject of an appeal to his brother. See Mitchell vs. Mitchell, No. 15790. Defendant - Appellant also filed a motion for an Order to Show Cause in Re Modification of the Decree for transfer of custody, Serving the Plaintiff - Respondent at her home in Richardson, Texas. Defendant - Appellant then disappeared and absented himself from the jurisdiction of the Court for a period of eleven (11) months, having the children with him.

In response to the Order to Show Cause in Re Modification, Plaintiff - Respondent, knowing that the defendant had kidnapped the children, had abandoned the property, and had no intention of returning, sought protection for her interest in the property, sought protection of the children's inchoate interest in the property, and sought from the Court, an appointment of a receiver

and a Lis Pendens. Subsequent to the filing and recording of the Lis Pendens, the Quit Claim Deed from Defendant - Appellant to his brother,=was recorded (title then being in both defendant and plaintiff).

L. Kent Bachman, having been designated by the Presiding Judge of the Second Judicial District sitting as a District Court, signed an Order appointing a receiver under Rule 66, from which Defendant - Appellant brings this appeal.

ARGUMENT

POINT I

THE **RULE OF THE COURT** APPOINTING A RECEIVER UNDER RULE 66, IS NOT=A FINAL ORDER FROM THE COURT FROM WHICH AN APPEAL LIES.

That Rule 66(a)(6), provides for the appointment of receivers in all other cases where receivers have heretofore been appointed by the usages of Court of Equity. Whereas here, the property was in jeopardy, was not being managed and in fact, had been abandoned by the defendant, or so it appeared to the Court. The Court had the responsibility of protecting the interest of the parties in the property.

That the appointment of a receiver is not a final order is clearly discussed and is ruled upon by Popp vs. Daisy Gold Mining Co., 22 Utah 457, 63 P.185, that clearly no appeal from the Court order imposing and appointing a receiver does lie at this time. and therefore, the appeal should be dismissed.

POINT II

THAT THE LIS PENDENS IS NOT DEFEATED BY AN UNRECORDED QUIT CLAIM DEED.

The Quit Claim Deed was not recorded until after the Lis Pendens had filed, as set forth in Gigliotti vs. Albergo, 115 P.2d 791, 100 Utah 392. If one substituted brother for wife in that case, then brother could take no interest superior to the interest of the Lis Pendens.

POINT III

A RECEIVER MAY BE APPOINTED ON AN EX-PARTE APPLICATION

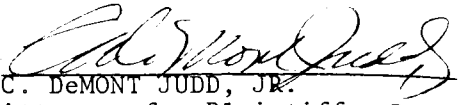
Under Rule 66(c), a receiver may be appointed on an ex-parte application. In this case, a receiver was appointed on an ex-parte application, and appropriate hearing was held with the Defendant - Appellant being represented and a lengthy hearing having been had. The Court ruled that in fact a receiver should be appointed and in fact appointed the receiver suggested by, and the law partner of, the attorney for the Defendant - Appellant contrary to Rule 66(v).

CONCLUSION

The Respondent respectfully submits to this Honorable Court, that the appointment of a receiver as in this case, is not a final Order from which appeal to the Supreme Court would lie.

FURTHER, that the Lis Pendens is not defeated by the unrecorded Quit Claim Deed.

FURTHER, that the appointment of a receiver may be ex-parte. Respectfully submitted this 27th day of June, 1979.



C. DeMONT JUDD, JR.
Attorney for Plaintiff - Respondent

CERTIFICATE OF MAILING

A copy of the foregoing Brief of Respondent was posted in the United States Mail postage prepaid and addressed to the attorney for the Appellant, Stephen W. Farr and Ronald W. Perkins, 2447 Kiesel Ave., Ogden, Utah 84401 on this 21st day of June, 1979.

RoseMarie J. Brady
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Secretary