

1979

Lucille Jesse Moffat Thornock, Et Al. v. Lois S. Cook : Brief of Defendant and Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Thornock v. Cook*, No. 16231 (Utah Supreme Court, 1979).
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IN THE SUPREME COURT OF THE STATE OF UTAH

LUCILLE JESSE MOFFAT	:	
THORNOCK, et al.,	:	
Plaintiffs and Respondents,	:	Case No. 16231
vs.	:	
LOIS S. COOK,	:	
Defendant and Appellant	:	

BRIEF OF DEFENDANT AND APPELLANT

Appeal from the Judgment of the First
Judicial District Court in and for
Box Elder County, Utah
The Honorable VeNoy Christofferson, Judge

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- Duncan v. Hemmelwright, 112, Utah 262, 186 P. 2d 965
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- In Re Williams' Estates, 10 Utah 2d. 83, 348 P. 2d
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- Reliable Furniture Co. v. Fidelity and Guaranty
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- Breen v. Morehead, 126 S.W. 650 (Tex. Civ. App. 1910).
- 19 Am. Jur. 2d "Corporations" §1227 (1965).
- 19 C.J.S. "Corporations" §1038 (1940).
- 26 C.J.S. "Deeds" §118 (1956).
- 7 Thompson on Real Property §3226 (1962).

STATUTES CITED

- Utah Code Annotated §57-1-13 (1953).
- Rule 56, Utah Rules of Civil Procedure.

IN THE SUPREME COURT
OF THE STATE OF UTAH

LUCILLE JESSE MOFFATT THORNOCK,)
WILLA LUCILLE THORNOCK KENNEDY,)
ADEN KAY THORNOCK, JOHN RUSSELL)
THORNOCK, and LOIS ANN THORNOCK)
BROWN, the Determined Heirs of)
ADEN WOODRUFF THORNOCK,)
)
Plaintiffs and Respondents) No. 16231
)
vs.)
)
)
LOIS S. COOK)
)
Defendant and Appellant)
)
)

APPELLANT'S BRIEF

Appeal from the Judgment of the District Court
of the First Judicial District of the State of
Utah, in and for the County of Rich.
Hon. VeNoy Christofferson, Judge.

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STATEMENT OF THE CASE

This is an action to quiet title to mineral rights in certain real property located in Rich County, Utah.

DISPOSITION IN LOWER COURT

The District Court of Rich County granted a Default Certificate against all defendants except Appellant LOIS S. COOK, who alone appeared and answered; granted Summary Judgment for Plaintiffs upon Plaintiffs' Motion; and issued a Decree of Quiet Title confirming title to the disputed mineral rights in Plaintiffs. From this Summary Judgment and Decree, Defendant LOIS S. COOK appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Summary Judgment below, and a remand to the District Court for a trial by jury on the merits.

STATEMENT OF FACTS

It must first be emphasized that the instant dispute concerns mineral rights only; there is no dispute regarding surface rights. [CT 349.] In fact, the Title Opinion submitted on behalf of Plaintiffs reports that the surface

rights of all lands under examination vest solely and exclusively in Defendant LOIS S. COOK. [CT 166.]

To determine the status of the mineral rights, a scrutiny of the relative claim of title is essential. In regard to the disputed lands, the Title Opinion submitted by Plaintiffs shows that these lands, originally the property of the United States, were conveyed to the State of Utah without any reservation of mineral rights. [CT 167.] These lands were similarly conveyed by the State of Utah to individual owners without any reservation of mineral rights. [CT 167.]

Thus, pursuant to Patent No. 15259, dated March 12, 1931, some 272.88 acres were granted to Joseph E. Hatch and Co. [CT 238.] Similarly, on that same date, pursuant to Patent No. 15260, some 80 acres were granted to Joseph E. Hatch and Ezra T. Hatch. [CT 250.]

Subsequently, by a deed executed April 1, 1941, Joseph E. Hatch and his wife Katie Hatch attempted to convey the described lands to their four daughters. [CT 245.] One searches the record in vain, however, for any record of a conveyance of the 272.88 acre tract, or any part thereof, by the original private grantee, Joseph E. Hatch and Co.. Similarly, one searches the record in vain for any evidence of a conveyance of the 80 acre tract, or any part thereof, by the original private grantee, Joseph E. Hatch and Ezra T. Hatch.

By a deed dated April 25, 1947, the four Hatch daughters conveyed all the lands subject to dispute herein to one Aden W. Thornock.

By a deed dated June 30, 1950, Aden W. Thornock and his wife Lucille conveyed the subject property with the exception of a 40 acre tract, to one Lawrence B. Johnson. [CT 7.]

By a deed dated December 1, 1952, Lawrence B. Johnson and his wife Lois L. Johnson conveyed the subject property, with the exception of the same forty acre tract, to Howland J. Cook and Lois S. Cook, husband and wife, "Reserving to the grantees herein all coal, oil and other minerals as may have been granted in the original patents to the above described land." [RT 8, emphasis added.]

By deed dated May 21, 1958, the apparent omission of the 80 acre tract in the two previous conveyances was cured by its conveyance from Aden W. Thornock and Lucille J. Thornock to Howland J. Cook and Lois S. Cook, his wife, as joint tenants, "for the sum of one dollar." [CT 277.]

Finally, Plaintiffs have presented a document which purports to be a "Quitclaim Deed for Coal, Oil and other Minerals" from Howland Cook and Lois Cook to Aden W. Thornock. [3 pages, attached as "Exhibit One" to the deposition of LOIS S. COOK, and part of the instant record on appeal.] Given the crucial role assumed by this document in the decision of the trial court [RT 389; 377], it warrant

the closest scrutiny on the part of this honorable Supreme Court. In particular, the following facts merit notice:

(a) One of the alleged grantors, Howland Cook, died on July 21, 1975 [per death certificate, RT 305], some two and a half years before the instant matter was filed below;

(b) There is a marked contrast between the first and second pages of the alleged quitclaim deed: page one contains the description of the properties allegedly conveyed on stationery leaving in print the name of the law firm of "Dahl and Sagers"; the second page contains exclusively the purported signatures of the alleged grantors, with no descriptive material, and on different stationery without any printed legend.

(c) Page one of the alleged quitclaim deed shows the insertion in pen of additional land, and this addition is purportedly validated with the initials of the deceased Mr. Cook, but without any date, and without any attempt of similar "validation" on the part of the other grantor, Mrs. Cook.

(d) The only surviving co-grantor, defendant and appellant LOIS S. COOK, has testified that she has no recollection of executing this purported quitclaim deed. [Cook deposition 28:17 - 29:1.]

ARGUMENT

- Point 1. THE TRIAL COURT ERRED IN GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, BECAUSE THE RECORD SHOWS THAT THERE ARE TRIABLE ISSUES OF FACT IN THIS CASE:
- A. THE RECORD SHOWS THAT THE PURPORTED QUITCLAIM DEED FROM DEFENDANT AND HER LATE HUSBAND TO PLAINTIFFS' PREDECESSOR IN INTEREST IS OF QUESTIONABLE VALIDITY, BOTH ON ITS FACE AND IN THE LIGHT OF THE CIRCUMSTANCES OF ITS EXECUTION: THIS MERITS THE FULLER SCRUTINY OF A TRIAL ON THE MERITS;
 - B. THE RECORD SIMILARLY CASTS SUBSTANTIAL DOUBT ON THE CLAIM OF TITLE TO THE REAL PROPERTY IN DISPUTE, AND SPECIFICALLY ON THE CONVEYANCE BY JOSEPH E. HATCH AND KATIE HATCH TO THE FOUR HATCH DAUGHTERS: IF THIS CONVEYANCE WAS DEFECTIVE THEN IT WOULD APPEAR THAT DEFENDANT HOLDS TITLE TO THE REAL PROPERTY IN DISPUTE, NOT BY VIRTUE OF (AND SUBJECT TO THE LIMITING TERMS OF) ANY DEED, BUT BY OPERATION OF LAW THROUGH ADVERSE POSSESSION, TOTALLY AND WITHOUT ANY RESTRICTION.

In the state of Utah the procedures for summary judgment in the District Court are set forth by Rule 56 of the Rules of Civil Procedure.

The traditional advantage of the summary judgment has been described by the Utah Supreme Court as follows:

... the granting of such a motion does have a salutary purpose in our procedure because it eliminates the time, trouble and expense of a trial...

Brandt v. Springville Banking Co.,
10 Utah 2d. 350, 353 P. 2d 460, 462
(1960).

While a summary judgment may eliminate the "time trouble and expense" of a trial, it frequently will not eliminate the "time, trouble and expense" of an appeal. This should be particularly obvious to the Supreme Court of Utah. Utah has no intermediate appellate courts, and the summary judgments which save "time, trouble and expense" for the District Court, tend to have the opposite effect, directly and immediately, upon the Supreme Court.

It is not contended that justice cannot be done through a summary judgment. It is contended, however, that it is considerably less easy for justice to be seen to be done through summary judgment. The summary process is necessarily abortive. The thwarted plaintiff is surely entitled to a showing that the abortion was therapeutic. A one page Memorandum Decision [RT 349, 377] is not likely to achieve this.

The Supreme Court of Utah has been sensitive to such considerations. Reliable Furniture Co. v. Fidelity and Guaranty Insurance Underwriters Inc., 16 Utah 2d. 211, 398 P. 2d 685 (1965), was a suit against an insurer. The District Court granted summary judgment for the defendant insurer, and the insured appealed. Reversing the judgment below, and remanding for trial, the Supreme Court repeated the received wisdom in these terms:

It is appropriate to reiterate that the dismissal of an action at pre-trial, which peremptorily turns a party out of court, is a drastic action which should be used sparingly and with caution.

Reliable Furniture, supra, 398 P.2d 685, 688.

The same court went on to elaborate:

The summary disposal of a case serves a salutary purpose in avoiding the time, trouble and expense of a trial where it is justified. But unless it is clearly so, there are other evils to be guarded against. A party with a legitimate cause, but who is unable to afford an appeal, may be turned away without his day in court; or, when an appeal is taken, if a reversal results and a trial is ordered, the time, trouble and expense is increased rather than diminished.

Reliable Furniture, supra, 398 P. 2d 685, 688.

Consequently, before a party shall be summarily denied his day in court,

His contentions as to the facts should be considered in the light most favorable to him, and only if it clearly appears that he could not establish a right to recovery under the law should such action be taken; and any doubts which exist should be resolved in favor of affording him the privileges of a trial.

Reliable Furniture, supra, 398 P. 2d 685, 688.

The same approach was taken in an earlier case In Re Williams' Estates, Utah 2d. 83, 348 P.2d 683 (1960), where the plaintiff alleged she was the adopted child of the decedents, and claimed her share in their estates. The District Court granted summary judgment in favor of the defendant administrators, and the alleged adoptee appealed. The Supreme Court reversed and remanded for trial:

A summary judgment is proper only if the pleadings, depositions, affidavits and admissions show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. If the proof which plaintiff claims she can produce when considered in the light most favorable to her would reasonably justify a finding by clear and convincing evidence that there was an agreement to adopt, then there is a genuine issue of material fact and the case must be reversed. We conclude that without giving plaintiff the opportunity to present her evidence in a trial we cannot hold as a matter of law that plaintiff is not entitled to recover.

Williams' Estates, supra, 368 P.2d 683, 685.

Applying the above principles of Reliable Furniture, and of Williams' Estates, to the case at bar, the question for the court may be formulated as follows: Considering all the facts on record in the light most favorable to the defendant and appellant, LOIS S. COOK, and resolving all doubts in favor of affording her the privileges of a

trial, does it clearly appear that she could not establish a right to all or part of the mineral rights in those Rich County lands to which she indisputably holds sole title to the surface rights?

This question can only be answered through a close scrutiny of the claim of title as set forth in the record and as summarized in the STATEMENT OF FACTS above, with specific forms on the two purported deeds which we shall now examine: the purported Cook - Thornock quitclaim deed, and the purported Hatches (parents) - Hatches (4 daughters) deed.

A. Cook - Thornock Quitclaim Deed:

The record shows that this deed was central to the District Court's decision to render summary judgment for Plaintiffs. [RT 349, 377]

A review of the record, however, shows that this deed creates more doubts than it solves.

First we must examine the pleadings. In her second amended and sworn answer the defendant specifically denies executing this particular deed. [RT 380]. She further answers that if the deed is found to have been executed by her and her husband, that such execution was extorted through prolonged threats, coercion and duress. [RT 340]. Finally, she alleges that the insertion by hand of a land description in the typed first page was done without her knowledge or consent. [RT 340].

Nor does appellant's case stand on these pleadings alone. The intrinsic qualities of the deed on its face unequivocally tend to lend color to the defendant's answer and allegations. Thus, in our STATEMENT OF FACTS, we have underlined the marked contrast between pages one and two, where page two bears signatures only, could thus be attached to any document, and is in fact attached to a first page which demonstrably uses a different quality of paper. Defendant's answer is similarly consistent with the self evident fact that after the original land descriptions were typed on page one, a further sector was added in ink. Thus addition purportedly was endorsed by the initials of defendant's husband. He, however, is long since dead, and no such endorsement by defendant is shown.

Further corroboration is provided by defendant's depositions. The record shows that defendant is an elderly widow [Deposition 8:20-25], who was deposed by two attorneys: Jensen and Axland. Jensen was polite and solicitous in his interrogation [Deposition 4:6-11; 9:21-23; 24:22]; Axland was abusive and threatening [Deposition 42:1-4; 44:4-13; 44:25; 46:15-17; Jensen then returned to interrogate politely [Deposition 57:7-9]. Despite this blatant cold-hot-cold technique, the defendant kept repeating that she had no recollection of having executed the deed [Deposition 9:19-20], and that a paper she had executed was executed solely because she and her husband

instrument was purportedly executed, 1959, the statute of limitations had not finished running so as to vest title by adverse possession in appellant.

Furthermore, where, as here, a purported quitclaim deed is involved, the overwhelming weight of authority is that the after-acquired title does not vest in the grantee. 26 C.J.S. "Deeds" §118 at 948 (1956). It is clear that this rule is followed in Utah. The effect of a quitclaim deed is codified in Utah Code Ann. §57-1-13 (1953):

Conveyances of land may ... be substantially in the following form:
quit-claim deed.

Such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance.

Two cases in Utah make clear that a quit-claim deed does not trigger the after-acquired title doctrine. In Duncan v. Hemmelwright, 112 Utah 262, 186 P. 2d 965 (1947) the court held that the plaintiff did not acquire title to real estate under the doctrine of after-acquired title, where the county acquired the title to the real estate after having executed a quit-claim deed to a coal company under which the plaintiff derived his claim. The court based its decision on the theory that a quit-claim deed does not convey an after-acquired title. The relevant

facts of the instant Cook case fit it into the Duncan reasoning. Mrs. Cook executed a quit-claim deed to the mineral rights and it was not until many years later that her claim by adverse possession of the mineral rights ripened into title, the doctrine of after-acquired title will not operate since a mere quit-claim deed was involved.

In Dowse v. Kammerman, 122 Utah 85, 246 P. 2d 881 (1952) the court affirms that the doctrine of after-acquired title is inapplicable where a quit-claim is involved. The court quotes the following language from Breen v. Morehead, 126 S.W. 650, 656 (Tex. Civ. App. 1910):

* * * where there is in the deed an express or implied representation that the grantor at the time of his conveyance was possessed of the title which his deed purports to convey, if such representation is false, whether he committed a fraud or was acting under an honest mistake, he is estopped from denying that he has a title; and, consequently, if he afterwards acquire the title, he cannot by setting it up defeat his own grant. (Citing cases.) But if the deed conveys 'all rights, title, and interest' of the grantor, instead of an absolute estate, the grantor will not be estopped from setting up an after-acquired title, since he did not undertake to convey a greater interest, or better title than he then had. (Citing cases.)

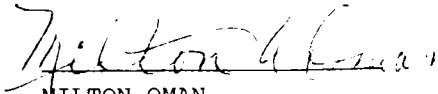
at 882.

It thus appears that the questions raised by the purported Hatch deed [CT 245], and by its impact on the subsequent record title history, are sufficiently grave to require a thorough ventilation at trial. A summary judgment in the context of such complexity as demonstrated was premature, and warrants setting aside by this honorable court.

CONCLUSION

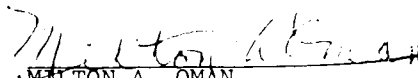
For the reasons set forth above, appellant prays this honorable court to set aside the summary judgment below, together with the decree of quiet title, and to remand the entire matter for a trial on the merits in the District Court.

Respectfully submitted,


MILTON OMAN
Attorney for Appellant.

March 20, 1979

I certify that on the above date two copies of the above Brief were personally delivered to LeRoy S. Axland, Attorney for Plaintiff--Respondent, 36 South Main Street, Salt Lake City, Utah 84147.


MILTON A. OMAN
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