

2009

Margaret Everson v. Bobby Larry Cooper, Sr.,
Laurie A. Cooper, and Laurel Ann Cooper, trustee :
Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

MARGARET EVERSON

Plaintiff/Appellee,

v.

BOBBY LARRY COOPER, SR.,
LAURIE A. COOPER, and LAUREL
ANN COOPER, TRUSTEE,

Defendants/Appellants.

Appellate No.: 20090311

District Court: 070502070

BRIEF OF THE APPELLEE

On Appeal from the Judgment and Orders of the District Court of the
Fifth Judicial District, State of Utah, the Honorable G. Rand
Beacham, Presiding.

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FILED
UTAH APPELLATE COURTS

FEB 09 2010

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THERE ARE NO PRIOR OR RELATED APPEALS

STATEMENT OF JURISDICTION

Jurisdiction is proper in this Court pursuant to Utah Code 78A-4-103.

STATEMENT OF THE ISSUES

Issue No. 1: Did the trial court properly consider evidence of the value of the property in determining whether a fraudulent transfer had occurred?

Standard of Review: Defendant did not object to evidence of the value of the house at trial therefore the appellate court will reverse only if the trial court committed plain error. State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346 (Utah 2000).

Issue No. 2: Did the Trial Court Properly Value the house in determining if it was an asset under the Utah Fraudulent Transfer Act?

Standard of Review: The appellate court reviews the trial court's findings of fact for clear error. Bradford v. Bradford, 1999 UT App 373, 993 P.2d 887 (1999).

Standard of Review as stated by the Appellants:

The appellate court will not disturb the trial court's decision unless there was a clear abuse of discretion. Shepherd v. Shepherd, 876 P.2d 429, 433 (Utah 1994).

DETERMINATIVE STATUTES

Utah Code Annotated §25-6-5 (2008).

STATEMENT OF THE CASE

A Florida judgment was entered against Appellant Mr. Bobby Larry Cooper in favor of Appellee Margaret Everson in the amount of \$60,385.76. This judgment was domesticated in Utah on November 7, 2005. On November 30, 2005, Appellant Cooper fraudulently transferred his interest in the subject property without receiving any compensation. At trial, the Appellants did not provide evidence that a lien encumbered the property on November 30, 2005. Rather, the Appellants provided evidence that the property was encumbered in February 2006, three months after the fraudulent conveyance.

At trial, the Appellants did not object to evidence of the property's value, including the Washington County tax records from 2008. The trial court made findings of fact and conclusions of law and ruled that the Appellants had fraudulently conveyed the property. The Appellants have challenged the trial court's use of the 2008 tax record, but have not adequately challenged the trial court's findings, have not marshaled all evidence in favor of the facts as found by the trial court, and have not

demonstrated that even viewing the evidence in a light most favorable to the trial court below, the evidence is insufficient to support the findings of fact.

STATEMENT OF FACTS

1. Margaret Everson, is an individual resident of Lake County, State of Florida. R. 173.

2. Appellant Bobby Larry Cooper, Sr., is an individual resident of Washington County, State of Utah. R. 173.

3. Appellant, Laurel Ann Cooper is an individual resident of Washington County, State of Utah, and is also the Trustee of the Laurel Ann Cooper Family Trust. R. 173.

4. Margaret Everson and the Appellant Bobby Cooper were previously legally married as husband and wife. R. 174.

5. The Circuit Court of Hillsborough County, Florida, issued a final Judgment of Dissolution of Marriage, ending the marriage of the parties on June 1, 1989. R. 175, R. 196 P. 7.

6. As part of the Final Judgment of Dissolution of Marriage, Appellant was ordered to pay plaintiff rehabilitative alimony as set forth in the Final Judgment of Dissolution of Marriage. R. 175.

7. Appellant Bobby Cooper did not comply with his financial obligations imposed by the Final Judgment of Dissolution of Marriage. R. 175.

8. The arrearage issue was litigated in the state of Florida and the Florida court found Appellant Cooper in contempt of Court for his willful disregard and failure to comply with the obligations imposed by the Final Judgment of Dissolution of Marriage. R. 158, Exhibit #6.

9. The Florida court entered a Final Judgment in this matter on or about May 13, 2005, in the total sum of \$60,385.76 against Appellant Bobby Cooper. R. 158, Exhibit #5.

10. The Florida Judgment was entered as a Foreign Judgment in the State of Utah on November 7, 2005, in the Fifth District Court of Washington County, Case No. 056502368. R. 167.

11. Appellant Bobby Cooper did not contest the filing of the foreign judgment in the State of Utah in November of 2005 nor any time since then. R. 196, P. 11.

12. Appellant Bobby Cooper did participate in the Florida proceedings which led to the entry of the Final Judgment against him. R. 158, Exhibit #8.

13. Since entry of the monetary judgments against Appellant Bobby Cooper, he has not paid plaintiff any sums of money towards the outstanding judgments and sums that he owes the plaintiff. R. 196, P. 7.

14. On or about January 29, 2004, Appellants purchased real property in Washington County, Utah, more specifically described as:

All of Lot Twenty-Six (26), Building H. SKY RIDGE TOWNHOMES (P.U.D.), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

TOGETHER WITH all improvements and appurtenances thereunto belonging.

SUBJECT TO encumbrances, easements, rights of way, restrictions, and reservations of record and those enforceable in law and equity.

PARCEL #: H-SRTH-H-26-RD. R. 158, Exhibit 1.

15. The Appellants Bobby Larry Cooper, Sr.'s and Laurie A. Cooper's interest in the property was memorialized in the Warranty Deed and they took as husband and wife and as joint tenants with full rights of survivorship. R. 158, Exhibit 1.

16. The individual Appellants held title to the Washington County property from January 2004 through the end of November 2005. R. 158, Exhibits 1 and 2.

17. On November 30, 2005, the individual Appellants executed a Quit Claim Deed quit claiming their interest in the subject property from themselves to the defendant Laurel Ann Cooper as Trustee of the Laurel Ann Cooper Family Trust dated November 23, 2005 R. 158, Exhibit #2.

18. The Appellant Laurel Ann Cooper then executed two other deeds conveying the same property, one to herself and one to herself as Trustee of the family trust. R. 158. Exhibits 3 and 4, respectively.

19. Appellant Bobby Larry Cooper, Sr., had no other appreciable assets with an appreciable value after his deed of the subject real estate on November 30, 2005. R. 196, P. 24.

20. The only asset the Appellant Bobby Larry Cooper, Sr., indicated that he owned was a half-share of water in a water company in Utah County which had an estimated value of less than \$2000-\$3000. R. 196, P. 24.

21. Appellant Bobby Larry Cooper, Sr., did not receive any consideration from any individual, including Appellant Laurel Ann Cooper, when he conveyed the subject real estate out of his name and into Laurel Ann Cooper's name as Trustee of her family trust in November of 2005, and the other Appellants did not pay any consideration for the transfer of the property out of Appellant Bobby Larry Cooper, Sr.'s name. R. 196, P. 24.

22. Appellant Bobby Larry Cooper, Sr., appeared in the foreign judgment matter for a motion and order in supplemental proceedings. Said Supplemental Order Proceedings were held on or about August 7, 2006. R. 158, Exhibit 7.

23. At the motion and order in supplemental proceedings, the Appellant, Bobby Larry Cooper, Sr., filled out a questionnaire wherein he indicated that he was paying monthly rent of \$700 per month; had monthly income of \$1508 per month; and did not own any other assets other than \$45 in cash and a balance in his checking account of \$675. R. 158, Exhibit 7.

24. Appellants Bobby Larry Cooper, Sr., and Laurel Cooper maintained a joint checking account into which all of his social security check was deposited, and he used at least \$700 of that towards household expenses, and most likely, for house payments, as indicated in his sworn testimony at the Supplemental Proceedings hearing in August of 2006. R. 196, PP. 24-25.

25. The Appellants introduced evidence at trial of the value of the real estate including the Washington County Tax Records. R. 196, P. 5. R. 158, Exhibit #9.

26. The real estate has an estimated value of at least \$181,638. R. 158, Exhibit #9.

27. The Appellant Laurel Cooper incurred a mortgage on the property in 2006. R. 196, P. 6, R. 158, Exhibit #11.

SUMMARY OF THE ARGUMENT

The Appellants introduced Washington County Tax records from 2004 through 2008 into evidence at trial to show the value of the subject

property. The Appellants never objected to the introduction of this evidence as proof of the property's value. The Appellants provided no other evidence of the property's value. Because the Appellants did not object to the 2008 tax records they must show plain error, i.e. that an error exists, that it should have been obvious to the trial court, and the error is harmful. The Appellants have not, and cannot, show plain error.

The Appellants cannot show that the trial court abused its discretion in valuing the property because they did not object to the evidence of value at trial, did not introduce evidence that the property was encumbered by a valid lien in November 2005, have not cited any authority that would indicate that the trial court abused its discretion in valuing the property, have not adequately challenged the trial courts findings of fact, and have not argued how the trial court's value of the property had any affect on its conclusions of law.

DETAIL OF THE ARGUMENT

Issue No. 1

Did the trial court properly consider evidence of the value of the house in determining whether a fraudulent transfer had occurred?

The Appellants did not object to evidence of the value of the house at trial therefore the appellate court will reverse only if the trial court

committed plain error. State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346 (Utah 2000).

The Appellants introduced evidence of the tax assessed value of the property at trial including the Washington County tax records from 2004 to 2008. The Appellants did not object to the introduction of any of these values. The Appellants did not introduce any evidence of the fair market value of the home, any appraisal, or any other evidence or argument in support of their position that the court improperly valued the home. The Appellants did not properly preserve the issue of value below and it is reviewed for plain error.

A party must object to the admission of evidence at trial to preserve the issue for appeal. State v. Cram, 2002 UT 37, ¶ 9, 46 P.3d 230 (Utah 2002); Clayton v. Ford Motor Co., 2009 UT App 154, 214 P.3d 865 (Utah 2009).

[T]o establish the existence of plain error and to obtain appellate relief from an alleged error that was not properly objected to, the appellant must show the following: (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phrased differently, our confidence in the verdict is undermined.

State v. Dunn, 850 P.2d 1201 (Utah 1993).

Here, the Appellants have alleged an error, but have not cited any authority to support that allegation. The Appellants have not alleged that the error was or should have been obvious to the court. The Appellants have not set forth any facts or arguments that absent the alleged error there is a likelihood of a more favorable outcome for the Appellants.

In Hill v. Estate of Allred, the Supreme Court of Utah engaged in a plain error analysis that is illustrative. 2009 UT 28, 216 P.3d 929 (Utah 2009). There the appellant alleged plain error because the trial court did not apportion joint and several liability in a civil conspiracy case. The Hill appellant alleged that Utah case law was directly on point regarding liability for civil conspiracy. The Supreme Court of Utah explained that Jedrziwski v. Smith, 2005 UT 85, ¶ 10, 128 P.3d 1146 (Utah 2005), the precedent setting case, made clear that an error occurred in Ms. Hill's case and that liability for civil conspiracy should have been joint and several. The Supreme Court, however, ruled that though Jedrziwski was on point, another case had somewhat confused the issue of joint and several liability and therefore the trial court's error was not obvious.

Here, the Appellants cannot point this Court to any authority that would make the trial court's valuation of the property erroneous. Further, even assuming error, the Appellants have not alleged that the error was

obvious. Therefore, the trial court did not commit plain error, its ruling should be affirmed, and the Appellants appeal should be dismissed.

Issue No. 2

Did the Trial Court Properly Value the house in determining if it was an asset under the Utah Fraudulent Transfer Act?

“The appellate court reviews the trial court's findings of fact for clear error.” Bradford v. Bradford, 1999 UT App 373, 993 P.2d 887 (1999). In reviewing for clear error, the appellate court only reverses when the finding is against the clear weight of the evidence, or if the Court otherwise reaches a firm conviction that a mistake has been made,” Cowley v. Porter, 2005 UT App 518, ¶ 42, 127 P.3d 1224 (2005).

In Bradford the appellate court was asked to determine whether a fraudulent transfer occurred. The court explained the applicable standard as follows:

First, did Mrs. Bradford's conveyance of her joint tenancy interest in the home constitute a fraudulent transfer? Because this issue involves both questions of law and of fact, we review the trial court's findings of fact for clear error. See Jeffs v. Stubbs, 970 P.2d 1234, 1244 (Utah 1998). "In contrast, we review a trial court's conclusions as to the legal effect of a given set of found facts for correctness." Id. (citing State v. Pena, 869 P.2d 932, 936 (Utah 1994)). Nevertheless, "[w]e may still grant the trial court discretion in its application of the law to a given fact situation." Id.

Bradford v. Bradford, 1999 UT App 373, P10, 993 P.2d 887, 889 (1999).

The Appellants introduced the very evidence that they now contend should not have been used by the trial court in valuing the home. In their brief the Appellants assert that “both parties agreed that the value of the property was in line with the [2005] value assessed by Washington County.” The Appellants provide no support for this contention and there is nothing in the record indicating any such agreement. The Appellants did not offer any other evidence of the fair market value of the home.

The Appellants’ reasoning that the home was not an asset because it was encumbered by a lien is contrary to the evidence that Appellants introduced at trial. Trial Exhibit #9 indicated that the Appellant Ms. Cooper incurred a mortgage on the home in February 2006, over two months after Ms. Everson domesticated her judgment in Utah.

The Appellants have apparently challenged paragraph 30 of the trial court’s findings wherein the trial court stated “In 2008, the Washington County Assessor’s estimate of the market value of the Cooper home was \$181,638.00.” R. 176. The trial court never stated that it was valuing the home at \$181,638; merely that amount was introduced at trial. Moreover, Appellant has not argued that the trial court had to make a specific finding as to the value of the home, had to determined if the property was encumbered by a lien, or was required to value the property or explain how it came to the

conclusion concerning value. The Appellants did not address these issues at trial or in its opening brief and has not pointed to any authority to challenge the trial court's findings.

In Saunders v. Sharp, the Supreme Court of Utah ruled that:

An appellate court does not lightly disturb the verdict of a jury nor the findings of fact made by a trial court. If a challenge is made to the findings, an appellant must marshal all evidence in favor of the facts as found by the trial court and then demonstrate that even viewing the evidence in a light most favorable to the court below, the evidence is insufficient to support the findings of fact. If the appellant fails to marshal the evidence, the appellate court assumes that the record supports the findings of the trial court and proceeds to a review of the accuracy of the lower court's conclusions of law and the application of that law in the case.

Saunders v. Sharp, 806 P.2d 198, 199 (Utah 1991).

Here, the Appellants have not marshaled any facts as found by the trial court, except to say that there are no facts to marshal. The Appellants have not viewed the evidence they themselves presented at trial concerning value in a light most favorable to the trial court's decision. The Appellants have not demonstrated that those facts are insufficient to support the findings of fact. Therefore, this Court must assume that the record supports the findings of the trial court.

Given that the findings are accurate, the Appellants have in no way shown that they are clearly erroneous or that the trial court improperly

applied the Fraudulent Transfer Act. The Appellants have not and cannot argue that the trial court misapplied the Fraudulent Transfer Act because the trial court applied all the elements of Utah Code Annotated § 25-6-5 and specifically concluded that the property was the Appellant Bobby Cooper's only substantial asset, based on the findings and ruled that the Appellants had fraudulently transferred the property based, again, on the findings. Utah Code Annotated § 25-6-5.

The Appellants' cited standard of review also indicates that the trial court has broad discretion in rulings concerning property division and an appellate court will only disturb the trial court's ruling if there is a clear abuse of discretion. Shepherd v. Shepherd, 876 P.2d 429, 433 (Utah 1994). The Appellants have not cited any authority, including the statute itself, indicating that the trial court must place a value on the home to determine if it was fraudulently transferred. Utah Code Annotated § 25-6-5. The Appellants have not cited any authority regarding how the trial court should have valued the home. The Appellants have not cited any authority to show that the court must explain how it valued the home. The Appellants have not cited any authority to show that the Court has to consider the value of the home in making its conclusions. The Appellants have not cited any

authority to support their contention that it is an abuse of discretion to look at tax rolls over a period of time to determine value of property.

The Appellants have cited the definition of asset under the Fraudulent Transfer Act, but have not explained or even attempted to explain if or how the valuation of an asset affects whether the Act has been violated. Indeed, it is completely plausible that the tax assessed value underestimated the actual fair market value and the trial court weighed the housing market in Washington County, evidence of how much the Appellants paid for the home originally, and other evidence introduced at trial in making its conclusions. The Appellants did not ask for any clarification at trial or thereafter, did not raise any of the above mention issues or object at trial or thereafter or in their opening brief, and cannot show any abuse of discretion by the trial court.

The only case cited by the Appellants supports the fact that the trial court did not abuse its discretion: "There is no fixed formula upon which to determine a division of properties in a divorce action[;] the trial court has considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity." Shepherd v. Shepherd, 876 P.2d 429, 433 (Utah 1994). Therefore, the trial court properly valued the home and correctly concluded that the Appellants violated the fraudulent

transfer act. The Appellants have not shown clear error nor have they shown an abuse of discretion.

CONCLUSION

The Appellants did not object the Washington County Assessor's 2008 value of the property and in fact introduced that evidence at trial. The Appellants have not shown that the Trial Court committed plain error in citing this value in its findings of fact. The Appellants have not even attempted a plain error or a clear error analysis. The Appellants have not cited any authority to show that the Trial Court improperly consider the 2008 value. The Appellants have not adequately challenged the trial courts findings.

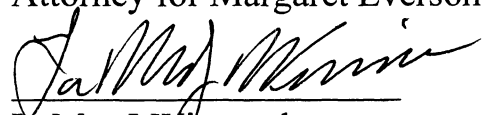
The trial court's findings are supported by the record and even if they were not, they are presumed to be supported because the Appellant's have not properly challenged the findings. The trial court accurately applied the Fraudulent Transfer Act to its findings in making its conclusions of law. The trial court was not clearly erroneous nor did it abuse its discretion in valuing the property, did not commit plain error in citing to the 2008 tax records, and its ruling should be affirmed.

ATTORNEY'S FEES AND COSTS

Pursuant to Rule 33, Utah Rules of Appellate Procedure, the Appellee requests an award against the Appellants for attorney's fees and costs. The Appellants' brief is not grounded in fact, not warranted by existing law, and the Appellants have not set forth any good faith arguments to extend, modify, or reverse existing law. The Appellants have ignored the facts – they introduced the evidence they now challenge – they introduced the evidence of tax assessed value and did not provide any additional evidence or formula for valuation of the home. The Appellants have not cited any existing authority for their position. The only result of the appeal has been the Appellants have had additional time at the property and have prevented the Appellee from collecting the alimony judgment. Therefore, the Appellee respectfully requests that this Court award her costs and attorney's fees in defending this appeal.

Respectfully submitted,

LAMAR J WINWARD
Attorney for Margaret Everson

A handwritten signature in black ink, appearing to read "Lamar J. Winward", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF THE APPELLEE**, was mailed by first-class mail on this the 9th day of February, 2010 to the following:

Reed R. Braithwaite
50 East 100 South, Suite 101
St. George, Utah 84770

A copy of the digital submission on compact disc was mailed to:

Utah Court of Appeals
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114


Julie Wright
150 North 200 East
St. George, Utah 84770
(435) 628-1191

ADDENDUM

Title/Chapter/Section:

Go To

Utah Code

Title 25 Fraud

Chapter 6 Uniform Fraudulent Transfer Act

Section 5 Fraudulent transfer -- Claim arising before or after transfer.

25-6-5. Fraudulent transfer -- Claim arising before or after transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Enacted by Chapter 59, 1988 General Session

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