

2009

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

Utah Court of Appeals

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IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

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

Defendants/Appellants,

vs.

MARGARET EVERSON,

Plaintiff/Appellee.

Appellate No. 20090311

Argument Priority No.

District Court 070502070

BRIEF OF APPELLANT

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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## JURISDICTION OF THE UTAH COURT OF APPEALS

Jurisdiction is proper in the Utah Court of Appeals pursuant to Utah Code §78A-4-103.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### ISSUE NO. 1

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 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 Ct. App. 1994).

### PRESERVATION OF THE ISSUE

This issue was preserved in Appellant's Memorandum in Support of Defendants' Proposed Findings, Defendants' Proposed Findings and Conclusions of Law, (R. 166 – 172).

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

Utah Code Ann. §25-6-2(2) (2008)

Utah Code Ann. §78B-5-503(2008)

## STATEMENT OF THE CASE

### 1. NATURE OF THE CASE

This is an action to find that a transfer made by Mr. Cooper to his wife's trust on November 30, 2005 was fraudulent. Prior to the November 20, 2005, transfer the house was titled to Mr. and Mrs. Cooper as joint tenants. After the transfer, Mr. Cooper was removed from the house. At the time of the transfer the house was encumbered by a valid lien, in the amount of \$124, 279.01. The value of the property at the time of the transfer was \$145,715.00. The homestead exemption, under the Utah Exemptions Act, at the time of the transfer was \$40,000.00. The trial court however, valued the house at \$181,638.00 based on a 2008 value.

### 2. STATEMENT OF FACTS

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

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

3. Defendant Laurel Ann Cooper is an individual resident of Washington County, State of Utah. R. 173.

4. Plaintiff and Defendant Bobby 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 Plaintiff and Defendant Bobby on June 1, 1989. R. 175; R. 196, p.7.

6. Judge Lawrence J. Semento entered a Final Judgment in this matter on May 13, 2005 for a total amount of \$60,385.76. R. 175.

7. On November 7, 2005, Plaintiff filed a Sworn Application to Register Foreign Final Judgment in the Fifth District Court for the State of Utah in an attempt to collect on the Final Judgment from Florida. This was filed as case #060502273. R. 167.

8. On or about January 29, 2004, Defendant Bobby and Defendant Laurie purchased real property in Washington County, Utah, more specifically, all of lot 26, Building H, Sky Ridge Townhomes (P.U.D.), located at 2576 West 210 North, Hurricane, Utah. Defendant Bobby did not pay any consideration to be put on title and was put on title for the intent of estate planning purposes because he knew that the house was to go to Defendant Laurie's daughter. R.158, Exhibits 1 and 2.

9. Defendant Laurie hired Attorney Steve Harris prior to the filing of the Florida Judgment in Utah to draft her estate plan placing the house in a trust solely for her daughter. R. 158, Exhibit 13.



10. On November 30, 2005, Defendant Bobby and Defendant Laurie transferred the Hurricane property to Defendant Laurie as Trustee of the Laurel Ann Cooper Family Trust. R. 158, Exhibits 3 and 4.

11. At the time of the November 30, 2005, transfer there was a valid lien in the amount of \$124,279.01, encumbering the property. R. 158, Exhibit 11; R. 196, p. 18.

12. At the time of the transfer the fair market value of the property was \$145,715.00 according to the county tax record, R. 158, Exhibit 9; R. 196, p.18; R. 196, p. 19).

13. The Trial Court valued the home at the time of the transfer at \$181,638 using the 2008 Washington County Assessor's estimate value of the home. R. 176; and R. 158, Exhibit 9.

14. The Plaintiff/Appellant testified that she felt the Washington County Assessor's estimate value of the home was at least what was indicated on the tax rolls of Washington County. R. 196, p. 8.

## SUMMARY OF ARGUMENTS

### Issue No. 1

The Uniform Fraudulent Transfer Act defines "Asset" as property of the debtor, but does not include (a) property to the extent it is encumbered by a valid lien; and/or (b)

property to the extent it is generally exempt under nonbankruptcy law. Utah Code §25-6-2(2).

The property is encumbered by a valid lien, in the amount of \$124, 279.01 and under the Utah Exemptions Act, the parties are entitled to a \$40,000.00 homestead exemption in the property. Both parties agreed that the value of the property was in line with the value assessed by Washington County. Washington County Tax Assessor valued the home at \$145,715.00 at the time of the transfer. (R. 158, 9). The Trial Court valued the home at the time of the transfer at \$181,638 using the 2008 Washington County Assessor's estimate value of the home. (R. 176; and R. 158, Exhibit 9). The Trial Court erred in using the 2008 value when the alleged fraudulent transfer took place in November 30, 2005. Based upon this value, the property was not an "Asset" under the Uniform Property Transfer Act. (R. 196, p. 8, 18-19).

## ARGUMENTS

### Issue No. 1

Did the Trial Court Properly Value the House in Determining if it was an Asset under the Utah Fraudulent Transfer Act?

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 Ct. App. 1994).

The Uniform Fraudulent Transfer Act defines “Asset” as property of the debtor, but does not include (a) property to the extent it is encumbered by a valid lien; and/or (b) property to the extent it is generally exempt under nonbankruptcy law. Utah Code §25-6-2(2).

The property was encumbered by a valid lien, in the amount of \$124,279.01 R. 158, Exhibit 11; R. 196, p. 18., and under the Utah Exemptions Act, the parties are entitled to a \$40,000.00 homestead exemption in the property. (Utah Code 78B-5-503). Both parties agreed that the value of the property was in line with the value assessed by Washington County. Washington County Tax Assessor valued the home at \$145,715.00 at the time of the transfer. The Trial Court valued the home at the time of the transfer at \$181,638 using the 2008 Washington County Assessor’s estimate value of the home. The Trial Court erred in using the 2008 value when the alleged fraudulent transfer took place in November 30, 2005. Based upon this value, the property was not an “Asset” under the Uniform Property Transfer Act.

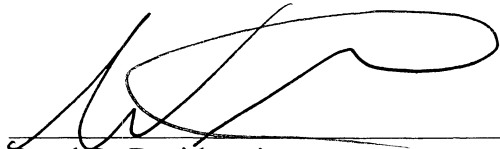
There really aren’t any facts to marshal to support the Trial Court’s finding of the value of the home. The Trial Court used Exhibit 9, the Washington County Assessor’s estimated value of the property to derive its value for the house. The Court used the 2008 value rather than the value at the time of the transfer. This logic doesn’t make any sense because values fluctuate and to determine whether or not a transaction is fraudulent or

not, one would have to see what the date of trial is rather than the date the transaction occurred. This is clearly error and needs to be reversed.

### CONCLUSION

For these reasons, the Trial Court's valuation of the home using a 2008 value when the alleged fraudulent transaction took place in 2005, should be reversed and remanded.

DATED this 9 day of December, 2009.

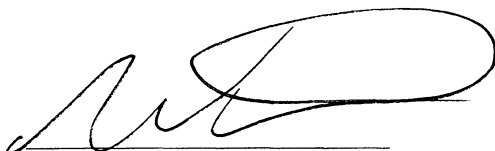


Reed R. Braithwaite  
Attorney for Defendants/Appellants

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing: APPELLANT'S BRIEF was hand-delivered this 9 day of December 2009 on the following:

LaMar J. Winward  
150 North 200 East, Suite 204  
St. George, Utah 84770



Reed R. Braithwaite  
Attorney for Defendants/Appellants

## ADDENDUM

### Findings of Fact and Conclusions of Law

2009 MAR 11 PM 2:04

IN THE FIFTH DISTRICT COURT FOR  
WASHINGTON COUNTY, STATE OF UTAH

---

MARGARET EVERSON,

Plaintiff,

vs.

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

Defendants.

BY  \_\_\_\_\_  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Civil No. 070502070  
Judge G. Rand Beacham

The Court has considered the testimonies of the witnesses, the exhibits received into evidence, and the arguments of counsel made at the bench trial of this case. The Court has also considered the parties' proposed findings of fact and conclusions of law and their memoranda, all of which were submitted after the trial. On this basis, the Court now makes its Findings of Fact and Conclusions of Law as follows.

FINDINGS OF FACT

1. Plaintiff Margaret Everson (hereafter "Ms. Everson") is an individual residing in Lake County, Florida

2. Defendant Bobby Larry Cooper, Sr. (hereafter "Mr. Cooper") is an individual residing in Washington County, Utah.

3 Defendant Laurel Ann Cooper (hereafter "Ms. Cooper") is an individual residing in Washington County, Utah, and is also the Trustee of the "Laurel Ann Cooper Family Trust dated November 23, 2005."

4 Ms Cooper is also known as Laurie A Cooper

5 Ms. Everson and Mr Cooper were formerly married, and were divorced by the Final

Judgment of Dissolution of Marriage of a court of the State of Florida on June 1, 1989.

6. The Final Judgment of the Florida court required Mr. Cooper to pay Ms. Everson “rehabilitative alimony,” to make vehicle payments for Ms. Everson, and to transfer water rights in Utah to Ms. Everson.

7. Mr. Cooper and Ms. Cooper were married on July 8, 1989, thirty-seven days after Mr Cooper was divorced from Ms. Everson.

8. On January 24, 2004, Ms. Cooper contracted to purchase a home located at 2576 West 210 North in Hurricane, Washington County, Utah (Unit 26 at Sky Ridge Town Homes); Mr. Cooper was not listed as a purchaser in the Real Estate Purchase Contract. [Exh. 10]

9. Title to the home was conveyed to Ms. Cooper and Mr. Cooper as joint tenants by a warranty deed recorded January 30, 2004. [Exh 1]

10. Defendants’ explanation of the inclusion of Mr. Cooper as a joint tenant is that “he was to make sure that if anything happened to [Ms. Cooper], that the house would go [to Ms. Cooper’s] daughter,” but this Court finds Defendants’ testimony in this regard to be neither logical nor credible, and finds no extrinsic evidence to support Defendants’ testimony.

11. Ms. Cooper and Mr. Cooper have resided in the home since its purchase in 2004.

12. Since June 1, 1989, Mr. Cooper has failed to pay Ms. Everson any amount that was ordered by the Florida court in the Final Judgment of Dissolution of Marriage.

13. After notice and a hearing in November 2004, the Florida court found Mr. Cooper to be in contempt of the orders made in the Final Judgment, and issued a Contempt Order sentencing Mr. Cooper to 90 days in jail and allowing Mr. Cooper to purge his contempt by paying \$58,826.82

to Ms. Everson. [Exh. 6]

14. Mr. Cooper failed to purge his contempt, and merely filed a handwritten response to the Contempt Order in which he denied owing Ms. Everson any amount. [Exh. 8]

15. On May 13, 2005, the Florida court granted Ms. Everson judgment against Mr. Cooper for the contempt amount plus interest, a total of \$60,385.76. [Exh. 5]

16. On November 7, 2005, the Florida judgment was filed in this Court as a foreign judgment. [Everson v. Cooper, Civil No. 056502368]

17. Notice of the registration of the Florida judgment was mailed to Mr. Cooper at his residence on November 8, 2005.

18. On November 23, 2005, Ms. Cooper created the “Laurel Ann Cooper Family Trust dated November 23, 2005.”

19. On November 30, 2005, Ms. Cooper and Mr. Cooper executed a Quit-claim Deed to convey their home to Ms. Cooper as trustee of the Laurel Ann Cooper Family Trust dated November 23, 2005, and that Quit-claim Deed was recorded the next day. [Exh. 2]

20. Ms. Everson asserts that the transfer made by the Quit-claim Deed was fraudulent.

21. Three months after the Quit-claim Deed, Ms. Cooper recorded two deeds to correct her name from “Laurie A. Cooper” to “Laurel Ann Cooper.” [Exh. 3 and 4]

22. At the time of the Quit-claim Deed of the home, Mr. Cooper received no consideration for the conveyance of his interest in the property to Ms. Cooper’s family trust.

23. At the time of the Quit-claim Deed of the home, Mr. Cooper had no other assets except a one-half share of water rights worth approximately \$2500.



24. At the time of the Quit-claim Deed of the home, Mr. Cooper was virtually insolvent and the conveyance rendered him insolvent.

25. Mr. Cooper's only income is Social Security benefits of \$1508 per month.

26. Notwithstanding the change of title, Mr. Cooper has continued to reside with Ms. Cooper in the home since its purchase in 2004.

27. On August 7, 2006, in a hearing on an order in supplemental proceedings in the foreign judgment case, Mr. Cooper testified that he pays rent of \$700 per month, although there is no evidence of a lease or rental agreement. [Exh. 7]

28. At trial, Mr. Cooper testified that he pays Ms. Cooper \$700 per month "for running the house."

29. In 2006, the monthly mortgage payment on the Cooper home was \$769.65. [Exh 11]

30. In 2008, the Washington County Assessor's estimate of the market value of the Cooper home was \$181,638. [Exh 9]

31. Defendants' argument that the Cooper home was not an "asset" in 2005 is contrary to the evidence before the Court.

32. Defendants' argument that they did not intend for Mr. Cooper to acquire an interest in the home is not supported by persuasive evidence and is contrary to the clear language of the warranty deed which conveyed an interest to Mr. Cooper.

#### CONCLUSIONS OF LAW

A. This Court has jurisdiction of the parties and the subject matter of this action.

B. The transfer made by the November 30, 2005 Quit-claim Deed was to an "insider" who was one of the joint tenants of the home on the property title. the transfer to Ms. Cooper as

trustee does not eliminate the fact that she was one of the transferors.

C. After the transfer, Mr. Cooper and Ms. Cooper retained possession and control of the home and continued to reside there with Mr. Cooper sharing payment of their living expenses.

D. Mr. Cooper and Ms. Cooper knew of Mr. Cooper's obligation to Ms. Everson and her attempts to collect from him long before they transferred their home to Ms. Cooper's trust.

E. Mr. Cooper's interest in the home was his only substantial asset, and the transfer made him insolvent.

F. Mr. Cooper received no consideration for the transfer of his interest in the home.

G. Mr. Cooper and Ms. Cooper made the transfer by the Quit-claim Deed with intent to hinder, delay or defraud Ms. Evenson in her attempts to collect Mr. Cooper's debt to Ms. Everson.

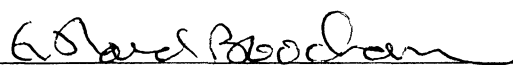
H. The conveyance made by the November 30, 2005 Quit-claim Deed was fraudulent.

I. The Florida judgment became a judgment lien on the Cooper home when it was filed in Utah on November 7, 2005, and it remains a judgment lien on that property with priority over subsequent conveyances.

J. Judgment should be rendered in favor of Ms. Everson and against Mr. Cooper, Ms. Cooper, and Ms. Cooper as trustee, setting aside the fraudulent conveyance and allowing Ms. Everson to execute her judgment lien against the Cooper home.

K. Ms. Everson's counsel should submit a judgment which is consistent with the foregoing Findings of Fact and Conclusions of Law.

DATED this 10 day of March, 2009.

  
G. RAND BEACHAM  
District Court Judge

CERTIFICATE OF DELIVERY

I hereby certify that on this 11 day of March, 2009, I provided true and correct copies of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to each of the attorneys named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah:

LaMar J Winward  
Attorney for Plaintiff

Reed R. Braithwaite  
Attorney for Defendants

  
\_\_\_\_\_  
DEPUTY CLERK OF COURT