

1952

Glenn Briggs v. F. W. Hess and Alice Hess : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinne

Recommended Citation

Brief of Appellant, *Briggs v. Hess*, No. 7818 (Utah Supreme Court, 1952).
https://digitalcommons.law.byu.edu/uofu_sc1/1721

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

CIVIL CASE NO. 7818

IN THE SUPREME COURT
of the
STATE OF UTAH

GLENN BRIGGS,

Plaintiff and Respondent

vs.

F. W. HESS and ALICE HESS,
his wife,

Defendants and Appellants

BRIEF OF APPELLANT

Supreme Court, Utah

I N D E X

'Table on Contents

	Page
Statement of Facts	1
Statement of Points	4
Argument	4

POINT I.

THE COURT ERRED IN GRANTING THE JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANTS FOR THE SUM OF \$609.68 PRINCIPAL AND \$18.60 COSTS FOR BREACH OF WARRANTY CONTAINED IN THE DEED IN QUESTION	4
--	---

POINT II.

THAT PLAINTIFF AND RESPONDENT PAID THE SUM OF \$484.68 TO LAURA TREE, ALSO KNOWN AS L. TREE AND AS L. T. ZITTING, AS A VOLUNTEER AND THEREFOR THE COURT ERRED IN GRANTING THE JUDGMENT IN FAVOR OF THE PLAINTIFF AND RESPONDENT AND AGAINST THE DEFENDANT AND APPELLANT	8
CONCLUSION	9

AUTHORITIES CITED

Court Decisions

Alpha Stores Limited, et al vs. Nobel, et al 135 Pac. 2d 625	7
Birch Ranch & Oil Co. vs. Campbell 111 Pac. 2d 1025 445	9
Doris Trust Co. vs. Quermbach, et al 133 Pac. 2d 1003	6
Dupee vs. Salt Lake Val. Loan and Trust Co. 57 Pac. 845	6
Mutual Sales Agency Inc. vs. Hori 259 Pac. 712	9
Trower vs. City & County of San Francisco 92 Pac. 1025	9
Whittaker vs. Greenwood et al 17 Utah— 53 Pac. 736	6

STATUTES CITED

104 - 5 - 16 Utah Code Annotated—1943	5
---	---

TEXTS AND DIGESTS CITED

54 CJS Section 22 Sub-Section B as Page 588 and following pages	7
70 CJS Section 150 at Page 357.....	9
Patton on Titles Part 3 Section 324 Page 984 and following pages	7

In the Supreme Court of the State of Utah

GLENN BRIGGS,

Plaintiff and Respondent

VS

F. W. HESS and ALICE HESS,
his wife,

Defendants and Appellants

STATEMENT OF FACTS:

This is an action brought by the Plaintiff and Respondent against the defendants and appellants based upon a breach of warranty in a Warranty Deed. The action was tried before the Court sitting without a jury and the Court rendered a judgment in favor of the plaintiff and respondent from which this appeal is taken.

The facts of this case resolve themselves around the sale and purchase of the real property described in the complaint between the respective parties to this action. For purpose of brevity, conciseness and clarity, the respective parties hereto shall be referred to by their respective names.

The real property involved in this action and which said property is located in Box Elder County, State of Utah, was assessed for tax purposes in the name of the Commercial Security Bank for the year 1929. The taxes were unpaid by said bank and on December 21st, 1929, the property went to Tax Sale. The tax sale certificate being recorded in Unredeemed Tax Sale Record 6, page 121, line 16 in the office of the county recorder of Box County, Utah. (See plaintiff and respondent's Exhibit B).

Thereafter, the delinquent taxes not having been redeemed by the owner within the four year period, an auditor's tax deed was issued by C. Henry Nielson, as County Clerk and Ex-Officio Auditor of Box Elder County, State of Utah, conveying said property in question to Box Elder County. This deed was dated April 28, 1936, and was recorded April 29, 1936, in Book 36 page 186 of, Deeds in the office of the county recorder of Box Elder County, Utah. (See plaintiff and respondent's Exhibit B).

That on January 28, 1942, Box Elder County, a public corporation, by quit claim deed conveyed the land in question, together with other lands, to F. W. Hess as grantee. This deed was recorded in the office of the county recorder of Box Elder County, Utah, on February 10, 1942, in Book 47 of Deeds, at page 373. (See plaintiff and respondent's Exhibit B).

Thereafter and on or about the 10th day of May, 1947, Laura Tree, also known as L. Tree and as L. T. Zitting, filed a quiet title action in the District Court of Box Elder County, State of Utah, as plaintiff against

F. W. Hess and Alice Hess, his wife, and other defendants, for the purpose of quieting title to the property involved in this action and other property. The defendants F. W. Hess and Alice Hess, his wife, Bear River State Bank, a corporation, and George M. Mason, and Lorene R. Mason, his wife, were the only defendants served with process and were the only defendants named in said action who appeared and answered said complaint. Further, there was no lis pendens filed by the plaintiff at any time during the pendency of said action in the county recorder's office of Box Elder County, State of Utah. (See plaintiff and respondent's Exhibit B, Defendant and appellants' Exhibit 1 and Reporter's transcript pages 2 and 9).

Hess and wife by warranty deed conveyed the land described in the complaint to Briggs, a bona fide purchaser, and for a valuable consideration on May 8, 1948. This deed was duly recorded in the office of the county recorder of Box Elder County, Utah, on the 28th day of March, 1948, in Book 57 of Deeds at page 364. Briggs was never at any time made a party to the action of Tree vs. F. W. Hess et al. (See defendants and appellants Exhibit 1).

The District Court of Box Elder County, State of Utah, entered a judgment in favor of L. Tree against F. W. Hess and Alice Hess, his wife, Bear River State Bank, a corporation, George M. Mason and Lorene R. Mason, his wife, on November 19, 1949, quieting title in L. Tree plaintiff, in regards to the land concerned in this action and other lands. A certified copy of said decree being recorded in the office of the county recorder

of Box Elder County, State of Utah, on the 20th day of December, 1949 in Book 1 of Miscellaneous Deeds page 357. (See Exhibits B and 1).

That on or about August 11, 1951, Briggs voluntarily and without any litigation affecting the validity of the real property described in plaintiff's complaint, paid to Laura Tree, also known as L. Tree and as L. T. Zitting, the sum of \$484.68. The said Briggs having made the payment after having consulted with his attorney in said matter.

ARGUMENT:

POINT I. THE COURT ERRED IN GRANTING THE JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANTS FOR THE SUM of SIX HUNDRED NINE AND 68/100 DOLLARS (\$609.68) PRINCIPAL AND EIGHTEEN AND 60/100 DOLLARS (\$18.60) COSTS FOR BREACH OF WARRANTY CONTAINED IN THE DEED IN QUESTION.

The action of Briggs against Hess in this matter is based upon the fact that when the District Court of Box Elder County, State of Utah, entered its decree in favor of Laura Tree, also known as L. Tree and as L. T. Zitting, against F. W. Hess et al Civil No. 6568 (see Exhibit 1) and the decree became final, that title to the property in question was litigated and that it was determined that Hess did not have a valid title and as a result Briggs did not receive a valid title from Hess.

This assumption is not correct for the reason that at the time the District Court entered its decree in the case of Tree vs. Hess Etal (see Exhibit 1), it had lost jurisdiction of the property in this action, and the title to said property was not litigated for the reason that Briggs, a bona fide purchaser, was never made a party to said action and Briggs being in such a position any judgment of the Court regarding this particular property was of no effect because there was no lis pendens filed at any time in said action, and in particular before Briggs, a bona fide purchaser, for value had acquired title and had his deed duly recorded. Hess having conveyed title to Briggs before the entry of the decree.

The statute of this state regarding lis pendens and being Title 104, Section 5, Chapter 16 Utah Code Annotated 1943 provides as follows:

“In an action affecting the title to, or the right of possession of, real property the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.”

The wording of the above statute is clear and explicit and does not seem to be open to any question as to the meaning, intent and purpose set forth therein.

The Supreme Court of the State of Utah has on various occasions defined succinctly and clearly the purpose and meaning of this particular statute. In the case of Whittaker vs. Greenwood et al, 17 Utah— 53 Pac. 736 in construing Section 3206, Compiled Laws of Utah 1888 and which section is almost identical with the present statute set forth above, states “ . . . The object of the statute was to provide a mode for giving constructive notice which was formerly given by the commencement of the action itself . . . ”

This Court again in Dupee vs. Salt Lake Val. Loan and Trust Co. ——— Utah ——— 57 Pac. 845 regarding the purpose of the doctrine of lis pendens, made the following statement: “ . . The object of notice of lis pendens is to keep the subject of the suit, or res, within the power and control of the court until the judgment or decree shall be entered, so that courts can give effect to their judgments, and that the public shall have notice of the pendency of the action. Lis pendens may be defined to be the jurisdiction, power, or control which courts acquire over property involved in a suit pending the continuance of the action, and until its final judgment therein. . . ”

The purpose and effect of the lis pendens statute in effect in this state during the time in question has been further considered by this Court in the recent case of Doris Trust Co. vs. Quermbach et al ——— Utah ——— 133 Pac. 2d 1003, in which case this Court affirms the doctrine of the earlier Utah cases hereinbefore cited.

✓ The same principal of law has also been followed by the California Courts as is expressed in the recent case of Alpha Stores Limited et al vs. Nobel et al 135 Pac. 2d 625. The Court in considering facts similar to those at hand expressly held that one in the position of Briggs in the instant case was a bona fide purchaser for value and was not effected by the prior judgment. At page 627 the Court states " . . The general rule is that one not a party to a suit is not affected by the judgment . . The qualification of the doctrine made by our statute is that such purchaser is not affected unless notice of such lis pendens be filed with the recorder. . . "

In citing this latter case I wish to point out to the Court that the Court was construing for all intents and purposes here a statute almost identical with our own and in its discussion the Court cites with approval previous decisions of the California courts.

The doctrine of statutory lis pendens as announced by the Supreme Court of the State of Utah, and the California courts is also followed by the courts in other states where they have similar statutes. 54 CJS Section 22 Sub-Section B at page 588 and following pages. And Patton on Titles, Part 3 Section 324, page 984 and following pages.

Therefore, on the basis of the facts in this case and the authorities hereinabove cited, it seems that Briggs and Hess are entitled to have their day in court to determine as against Laura Tree, also known as L. Tree and as L. T. Zitting whether or not Briggs is vested with a valid title to the property described in the plaintiff's complaint. The District Court in and for Box

Elder County, State of Utah, at the time of the entry of the decree in the case of Tree vs. Hess et al was without jurisdiction to enter any decree affecting the property involved in this action.

POINT II. THAT PLAINTIFF AND RESPONDENT PAID THE SUM OF FOUR HUNDRED EIGHTY-FOUR AND 68/100 (\$484.68) DOLLARS TO LAURA TREE, ALSO KNOWN AS L. TREE AND AS L. T. ZITTING, AS A VOUNTEER AND THEREFORE THE COURT ERRED IN GRANTING THE JUDGMENT IN FAVOR OF THE PLAINTIFF AND RESPONDENT AND AGAINST THE DEFENDANT AND APPELLANT.

The facts in this case are undisputed that the title to the real property Briggs purchased from Hess was not litigated in the action of Tree vs. Hess et al hereinabove referred to. The facts are further undisputed that Laura Tree, also known as L. Tree and as L. T. Zitting had not up to the filing of the complaint by Briggs against Hess, and the entry of the judgment in said matter, brought an action *against* Briggs for the validity of Briggs' title to the real property in question.

The most that it can be said in favor of Briggs from the pleadings and the evidence is, that Laura Tree either personally or through an agent informed Briggs that a decree quieting title against Hess involving the property in question had been obtained and that if he did not pay to them a certain amount that Tree would sell the property in question to someone else.

It should be kept in mind that this request against Briggs by Tree was made more than three years after he had received title to the property and approximately a year and a half after the entry of the decree in Tree vs. Hess et al. (See Exhibits B and 1).

The law seems to be well settled on the basis of the facts in this case that where a person makes a payment on the basis of a compromise and to avoid litigation such as Briggs did in this case that he pays as a volunteer and cannot make recovery. Birch Ranch & Oil Co. vs. Campbell, 111 Pac 2d 1026, Mutual Sales Agency Inc. vs. Hori 259 Pac 712 Trower vs. City and County of San Francisco, 92 Pac 1025, and 70 CJC Section 150 at page 357.

CONCLUSION

In view of the foregoing facts and the authorities, it is respectfully submitted that the judgment of the trial court be reversed.

Dated 23rd day of May, A. D. 1952.

George M. Mason
Attorney for Defendants and Appellants
Address: First Security Bank Bldg.
Brigham City, Utah