

1998

Laree R. Nielsen v. Robin A. Nielsen and Rod Nielsen: Petition for Rehearing

Utah Court of Appeals

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Robert L. Moody; Moody and Brown; attorney for appellee.

Shawn D. Turner; Larson, Turner, Fairbanks and Dalby; attorney for appellants.

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BRIEF

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IN THE COURT OF APPEALS

STATE OF UTAH

LAREE R. NIELSEN

:

PETITION FOR REHEARING

Plaintiff/Appellee,

:

vs.

:

Priority No. 15

ROBIN A. NIELSEN and ROD
NIELSEN

:

No. 981667-CA

Defendant/Appellant

:

Appeal from the Fourth District Court,
Utah County, Judge Steven L. Hanson

Robert L. Moody (2302)
MOODY & BROWN
Attorney for Plaintiff/Appellee
2525 North Canyon Road
Provo, Utah 84604

Shawn D. Turner (5813)
LARSON, TURNER, FAIRBANKS & DALBY
Attorney for Defendants/Appellants
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107

FILED
Utah Court of Appeals

MAR 02 2000

Julia D'Alesandro
Clerk of the Court

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STATE OF UTAH

LAREE R. NIELSEN	:	PETITION FOR REHEARING
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Robert L. Moody (2302)
MOODY & BROWN
Attorney for Plaintiff/Appellee
2525 North Canyon Road
Provo, Utah 84604

Shawn D. Turner (5813)
LARSON, TURNER, FAIRBANKS & DALBY
Attorney for Defendants/Appellants
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107

LIST OF PARTIES

THE CAPTION OF THE CASE CONTAINS THE NAMES OF ALL PARTIES

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STATEMENT OF RELEVANT FACTS

The following facts are relevant for consideration for purposes of this petition for rehearing.

1. Robin and LaRee Nielsen were divorced pursuant to an order dated July 16, 1984. R.381
2. Pursuant to the decree of divorce, the court awarded one half of the real property and the home in which they lived (716 West 580 South, Orem, Utah) to each party excepting a \$6,000.00 credit going to Robin Nielsen.
3. Pursuant to decree of divorce the family home was to be sold at the time that the youngest child turned 18. R.381
4. On January 8, 1986 Robin Nielsen transferred his interest in the real property awarded to him in the divorce by quit claim deed which was recorded in the Utah County Recorder's Office on January 10, 1986 to Rod Nielsen. R, 377-378.
5. This action was brought on March 7, 1995. R. 1-5
6. The complaint set forth two causes of action. The first cause of action sought recovery against the family home under the fraudulent conveyance statutes while the second sought contribution from the defendants for expenditures allegedly made by the plaintiff during her occupancy of the home. R.1-5
7. Defendants filed a motion for summary judgment. R. 98
8. In response to that motion the plaintiff raised for the first time the argument that she was somehow entitled to the property under the doctrine of constructive trust.
9. By memorandum decision dated November 15, 1996 the trial court partially granted the defendants' motion for summary judgment. R. 256

10. Within that memorandum decision the court specifically held the plaintiff's claims brought under the Utah Fraudulent Transfer Act and under the doctrine of constructive trust were barred by the relevant statute of limitations. The court also found that the claim for constructive trust was barred due to plaintiffs' lack of standing. R. 250.

11. The sole issue upon which the court did not grant defendants summary judgment was the issue of the offsets claimed by the plaintiff against the defendant Rod Nielsen. The court found there existed issues of material fact precluding the grant of summary judgment on that issue. R. 250.

12. At the time of the summary judgment hearing additional evidence was presented showing that the plaintiff knew or should have known of the transfer of the property prior to March 15, 1991. The court however, under the standard of a motion for summary judgment, adopted the facts most favorable to the plaintiff who found that she found out about the transfer "no later than March 15, 1991". R. 250

13. After trial the court found in defendants favor, on what was to have been the sole remaining cause of action, but awarded judgment to the plaintiff on the basis of the argument of constructive trust which the court had previously found to be barred.

14. That finding has been upheld by this court.

ARGUMENT

I. THIS COURT SHOULD RECONSIDER ITS RULING WITH RESPECT TO THE STATUTE OF LIMITATIONS.

A. The Statute of Limitations Had Expired.

The finding of the trial court was that Rod Nielsen was holding the half interest in the home from Robin Nielsen in constructive trust for Robin Nielsen. R. 374-375. This court likewise recognized that that was the finding of the trial court.¹

This court found that the correct statute of limitations is a four year statute of limitations found in UCA § 78-12-25(3). This court goes on to analyze the time frame under which LaRee Nielsen had notice of the constructive trust and applied the “discovery rule” to determine when the statutory should run.

There are two problems with this analysis. First, the question is not when did LaRee Nielsen’s cause of action accrue but when did the cause of action itself accrue. A litigant can not and should not be entitled to more rights than the actual parties themselves. There is no claim that LaRee Nielsen had a claim for constructive trust in this action. The claim is simply that Robin Nielsen had one. The test therefore is not when LaRee Nielsen knew of the cause of action but when Robin Nielsen could have or should have known of that cause. The correct time frame for calculating the statute of limitations would begin at the time that the property was transferred by Robin to Rod Nielsen. That was on January 8, 1986.

¹On page 6 of this court’s memorandum decision it states “we conclude that the trial court here did not abuse its broad discretion in determining that equity required the imposition of a constructive trust transferring title from Rod to Robin.”

A contrary result totally invalidates the recording statutes with respect to transferring property amongst family members. In the court's analysis a third party merely need claim they had no notice of the transfer of the property that was otherwise sold or transferred to a family member in order to be able to challenge any such transfer at any time after. This analysis gives a third party greater rights than the actual party who has the claim itself. It also invalidates the statute of limitations created by the legislature in the fraudulent conveyance statute U.C.A. § 25-6-10. There is no claim that Robin Nielsen could have at the time of this litigation made a claim against Rod Nielsen for constructive trust. If Robin Nielsen could not make such a claim LaRee Nielsen should not be able to extend the statute of limitations in order to receive this additional benefit.

B. If the Discovery Rules Were Available to LaRee Nielsen the Matter Should Be Remanded for Further Consideration by the Trial Court.

The finding of the trial court which has been upheld by this court denies the defendants their rights to due process. The issue of constructive trust had been decided in the defendants favor prior to the time of the trial. This court pointed out "Although the records shows LaRee may have had constructive notice of the deed when it was recorded defendants have failed to marshal any evidence that she had actual or constructive notice of the facts which would justify imposing the constructive trust before May 15, 1991."

Evidence of LaRee's prior knowledge was presented at the summary judgment stage of the proceeding. At that time judgment was granted to the defendants. The defendants did not present any additional evidence at trial or develop that evidence at trial because the issue had already been decided.

Clearly it is a denial of due process to the defendants in this case to have granted them judgment so as to lull them in to not presenting certain evidence at trial and then to reverse that very judgment and later deny the defendants appeal on the basis that there was no evidence to marshal in support of the defenses.

If this court finds that LaRee Nielsen is entitled to benefits that Robin Nielsen could never have, i.e. an extension of the statute of limitations, then at a bare minimum the issue as to when the statute of limitation should run based on LaRee Nielsen's knowledge should be remanded for determination by the trial court upon the full consideration of all of the evidence now that the defendants know that there is an issue at controversy.

To find that the defendants are precluded from raising that evidence at this stage would in essence make motions for partial summary judgment meaningless. The whole point of such motions is to reduce the amount of material to be presented at the time of trial. McBride v. Jones, 615 P.2d 431 (Utah 1980). If you had to present all of the same material regardless of the outcome of a summary judgment motion than the motion itself becomes a waste of the court and the parties time.

C. The Trial Court's Initial Determination That Plaintiff's Constructive Trust Was Barred by the Statute of Limitations Was Correct.

The trial court, on defendant's motion for summary judgment, determined that the fraudulent conveyance and constructive trust claims from the plaintiff were barred by the statute of limitations.

Im making that determination the court applied the statute of limitations found in UCA § 25-6-10.

This is the statutory provision in the Uniform Fraudulent Transfer Act U.C.A. §25-6-1 et.seq. That statute of limitations is the correct one to be applied in this case.

The specific findings of the court in this case and the findings upheld in this court in the court's decision were that Robin Nielsen owed LaRee Nielsen back child support and alimony. The finding also was that the defendant Rod Nielsen was holding real property in trust for defendant Robin Nielsen.

The court then took the stretch, which has been approved by this court, that the property in some fashion is returned to Robin Nielsen and from there can be used directly to satisfy the claims of Mrs. Nielsen against Robin.

Under the analysis taken by the trial court Mrs. Nielsen is not the beneficiary of the constructive trust she is simply a creditor. There has been no finding that Mrs. Nielsen was to be the beneficiary of a constructive trust nor has there been any argument to that effect. The argument solely goes as between Rod Nielsen and Robin Nielsen.

With respect to creditors the rights of a party have been specifically defined by the legislature in the Uniform Fraudulent Transfer Act. This act preempts any claim for a third party creditor that would otherwise allow them to piggy back onto Robin Nielsen supposed rights under a constructive trust.

The statute of limitations for this action is found in UCA § 25-6-10. This statute of limitations contains a modified version of the discovery rule. Rather than having the entire period begin anew in which a person can file there action it provides for an additional year after the discovery is made or for four years after the transfer is made. UCA § 26-6-10.

Under either of these scenarios, even accepting the March 15, 1991 discovery date as the date of discovery, LaRee Nielsen's claims are barred.

Although the issue of a constructive trust in favor of LaRee Nielsen was not argued to the trial court nor found by the trial court, this court appeared to address that issue citing with approval the cases of Parks v. Zions First National Bank, 673 P.2d 590 (Utah 1983) and Adams v. Jankouskas, 452 A.2d 148 (Del. 1982). Neither of these cases would avail a third party creditor such as Mrs. Nielsen. Both the Parks and Adams cases involve situations where a married couple acquired property during their marriage and upon the death of the wife it was discovered that the wife had divested of the totality of the marital property to someone other than the surviving spouse.

The divestiture of the totality of the property is the key distinction between those cases and the case before this court. In this case the parties were divorced. By way of the divorce decree the parties separate interests in the respective marital assets had already been determined. Mrs. Nielsen had no claim to the property in this case except that of any other creditor.

The importance of this distinction was recognized by the Supreme Court in the Parks case. In Parks the Supreme Court stated:

This evidence clearly and adequately supports the trial court's finding that plaintiff's labors and earning were responsible for the acquisition of a substantial portion of the marital estate. It is therefore appropriate to conclude that plaintiff had an "equitable interest" in the subject property and the total inclusion of such property in the estate of Mrs. Parks constituted "an unjust enrichment" of her estate. Accordingly, we hold that the trial courts imposition of a constructive trust upon the estate of Mrs. Parks was justified, *At least as to that portion representing plaintiff's proven interest therein.*"

Parks at 600.² (emphasis added)

Unlike the situation in Parks or Adams, the asset at issue here belonged solely to Robin Nielsen. It was not a marital asset belonging to LaRee Nielsen.

II. THE CASE SHOULD BE REMANDED ON THE ISSUE OF CONSTRUCTIVE TRUST.

No argument was presented at the time of trial with respect to the burden of proof of the plaintiff with regards to establishing a constructive trust. Indeed the issue was not addressed to the court because the court had specifically ruled already that the claim was barred, both by the statute of limitations and by lack of privity.

Because summary judgment had been granted to the defendants they did not bring evidence or argument with respect to the elements of constructive trust. Defendants should be allowed to marshal evidence, and present it to the trial court so that a determination of this issue can be made fully and fairly.

CONCLUSION

By virtue of the trial court's grant of summary judgment to the defendants the sole issues that were to be before the court at the time of trial were the determination of the amount of alimony and child support owed by Robin Nielsen and the issue of contribution on behalf of Rod Nielsen.

²The Adams case was decided on a similar basis. "In this appeal we face certain unique questions of Delaware law arising from a post-trial decision of the court of chancery imposing either a constructive or resulting trust on half of the assets, claimed to be part of the estate of Stella Jankouskas, also known as Stella Jann (Stella) in favor of John Jankouskas also known as John Jann (John)." Adams at 150 (emphasis added).

Allowing the trial court to expand that to add a cause of action for and a finding in favor of the plaintiff for constructive trust when that very claim had already been determined to be barred denies the defendants' due process.

The trial court seemingly got around this problem by finding the constructive trust to be from Rod Nielsen to Robin Nielsen with a subsequent transfer to LaRee Nielsen. If this is the case then Robin Nielsen's claim would have been barred by the statute of limitations and LaRee Nielsen should have no rights in excess of those of the party to whom they actually belong.

The legislature has addressed this issue or problem by adopting the Uniform Fraudulent Transfer Act. That right preempts any common law claims that LaRee Nielsen might be making. Under that act it was determined, initially correctly, by the trial court LaRee Nielsen's claims were barred by the statute of limitations.

Defendants therefore respectfully requests the court reconsider its ruling and determine that the claims of LaRee Nielsen for constructive trust are barred by the applicable statutes of limitations.

In the event the court finds the claims not barred by the statute of limitations, as a matter of law, the defendants request that the same issues being remanded to the trial court for a determination of the date of actual or sufficient constructive knowledge on the part of LaRee Nielsen to beginning the running of the statute of limitations.


The court should also remand the matter back to the trial court for four specific findings in evidence on the issue of the availability of constructive trust. In the event the statute of limitations does not bar Mrs. Nielsen's constructive trust claims the same should be returned to

the trial court for consideration of evidence as to the elements as to the elements of that cause of action in order to provide due process to the defendants.

Respectfully Submitted.


DATED this 2nd day of March, 2000.

LARSON, TURNER, FAIRBANKS & DALBY


Shawn D. Turner

CERTIFICATION OF COUNSEL

The above signed counsel hereby certifies that this Petition for Rehearing is submitted in good faith and without intention to further hinder or delay proceedings in this case.


Shawn D. Turner

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2000, I mailed, postage prepaid, a copy of the foregoing Petition for Rehearing to the following:

Robert L. Moody (2302)
MOODY & BROWN
Attorney for Plaintiff/Appellee
2525 North Canyon Road
Provo, Utah 8460

A handwritten signature in black ink, appearing to read "R. L. Moody", is written over a horizontal line.