

2009

Michael Ward v. Caroline Coats Graydon and Peter Coats: Unknown

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MICHAEL WARD,

Petitioner, Appellant, and Cross-Appellee

vs.

CAROLINE COATS GRAYDON,

Respondent and Appellee;

and

PETER COATS,

Respondent, Appellee, and
Cross-Appellant.

Case No. 20090714 CA

Trial Court. No. 080903379

BRIEF OF CROSS-APPELLEE MICHAEL WARD

On Appeal from the Third District Court for Salt Lake County,
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ARGUMENT

I. THE LOWER COURT MADE NO ERROR IN AWARDING SUMMARY JUDGMENT TO MICHAEL WARD

Cross-Appellant Peter Coats argues that because the lower court characterized—at least in part—his failure to respond in the summary judgment proceedings below as a default, the judgment of the lower court is vulnerable to direct attack on that basis. Ward questions whether this proposition is a matter of settled law. While Coats has admittedly made a colorable argument as to the potential invalidity of the concept of default in

a summary judgment proceeding, he has produced no authority directly stating the proposition he advances. Ward wishes to point out that there is at least one fairly recent example in Utah jurisprudence where an appellate court has (at least tacitly) recognized the concept of default in the context of summary judgment. See Pitts v. McLachlan, 567 P.2d 171, 171, 174 (Utah 1977) (denying on unrelated grounds the reversal of a summary judgment order that the Court characterized as having been entered on default).

Furthermore, Coats essentially would have this Court believe that the lower court made no substantive examination of the summary judgment pleadings, and simply awarded judgment on the basis of Coats' failure to respond. However, this is incorrect—the court below did not find for Ward solely on the basis of “default.” In fact, the court stated as a preface to its order granting summary judgment against Coats. “[t]he Court having considered the *motions*, the *memoranda* filed by Plaintiff and Defendant Graydon (the Court having noted that Defendant Peter Coats had not filed any opposition to the Plaintiff's Motion for Summary Judgment) and the *arguments* presented at the hearing, and *good cause* appearing, it is hereby ordered, adjudged and decreed” Order on Summary Judgment Motions and Judgment (emphasis added). In so doing, the lower

court made it clear that its judgment against Coats was not solely predicated upon his failure to respond, but upon motions, memoranda, arguments at hearing, and good cause appearing. This is further demonstrated by the lower court's minute entry from Coats' Rule 59 motion proceedings, which Coats quotes in his brief to this Court.

On August 31, 2009, Coats, now represented by counsel, filed the present [Rule 59/60 motion. Plaintiff has opposed the motion and explained why Coates is not entitled to relief from judgment under either rule 59 or Rule 60. The Court agrees entirely with the plaintiff's analysis and incorporates herein by reference. The analysis therein more than adequately supports the court's determination that Coats' motions fail.

Brief of Peter Coats 18.

The lower court did not—as seemingly alleged by Coats—abrogate its duty to examine the merits of the claims in the summary judgment, and did not make its decision solely on Coats' failure to respond. A ruling that Ward's claims on summary judgment were legally sufficient is—at the very least—implicit in the lower court's ruling. That court's treatment of Coats' Rule 59 and 60 claims for relief from judgment illustrate this even more clearly.

Furthermore, even if the lower court's ruling was in fact solely based on Coats' failure to respond to Ward's summary judgment motion, this court is not required to overturn it. Ward's position remains unchanged with regard to the legal claims he raised in the summary judgment, and he

maintains that those claims are adequate to demonstrate Coats' liability.

The Utah Supreme Court has held that:

A right ruling sustainable on correct legal reasoning, even though such correct reasoning takes in legal syllogisms not entertained by the lower court, will be upheld even though the lower court based the ruling on wrong legal reasoning. The appellate court is not confined to an examination of the correctness of the legal propositions on which the lower court based its ruling, but will examine the correctness of the ruling and may sustain it on reasoning which involved an entirely different chain of legal syllogisms.

Fisher v. Bank of Spanish Fork, 74 P.2d 659, 661 (Utah 1937).

This Court need not reverse the finding of the lower court simply because of the "default" language, even if Coats is correct in alleging its error. Rather, the decision should be upheld on the legal merits of the claims Ward made below.

Coats further erroneously alleges that the burden carried by a movant for summary judgment is "no different than what occurs in a criminal case." In fact, the burdens are hardly analogous at all. In a criminal case, the prosecution has the burden of proving beyond a reasonable doubt that certain *facts* occurred. If this burden is carried adequately, the defendant is supposed to be convicted of a crime befitting the proven facts. Summary judgment is altogether different. The mere existence of material facts in dispute is sufficient to defeat a motion for summary judgment—a movant's ability to prove those facts is immaterial to the motion's survival. In this

case, Coats has admitted to the facts alleged by Michael Ward in the summary judgment. This means that to prevail on that motion, Ward needed only to have alleged a proper legal claim against Coats that was supported by the facts Coats admitted. If Coats wishes to make comparisons to the criminal law arena, this situation is more analogous to a defendant stipulating to the prosecution's alleged facts (which would—under most circumstances imaginable—have the same effect as a guilty plea). Coats acts as if his concession to Ward's alleged facts is a small matter. Rather, his acceptance of the undisputed facts and failure to dispute the proper legal claims brought by Ward indeed entitle Ward to summary judgment under the very standard Coats advances.

II. BECAUSE COATS BREACHED THE DUTIES INHERENT IN JOINT TENANCY, THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO WARD

Coats' denial of liability is premised on his erroneous argument that the trial court erred because it based its grant of summary judgment on Coats' failure to oppose the motion rather than the substantive law underlying Ward's claim. To support his proposition, Coats mistakenly claims that Ward did not cite any legal authority on which the court could have based its judgment. But Coats' argument and concomitant

conclusion, based on a misreading of the court's order, are incorrect. In the motion and hearing for summary judgment, Ward did articulate a legal theory of Coats' liability, and the court accepted that theory as a basis for recovery. Contrary to Coats' assertion, the court did not base its judgment on his failure to file a responsive pleading; rather the court adopted the theory advocated by Ward. As he acknowledges in his brief, Coats attended the hearing on summary judgment, and the court allowed him to make an argument in opposition to the motion. That the court did not find his legal theory persuasive does not mean that the court's judgment was in error. If error occurred in this case, it belonged to Coats, who did not obtain representation and chose not to file a responsive pleading.¹

Predictably unhappy with the court's unsurprising decision, Coats is now asking this Court to do what the trial court refused to: rescue him from his own dereliction by reversing the grant of summary judgment. However, because the legal theory advocated by Ward provides a sufficient basis for

¹ Curiously, Coats makes no effort in his brief to explain why he failed to respond to the motion for summary judgment. Instead, his brief is laced with a series of hypotheticals intended to posit how the outcome theoretically may have been different had Coats hired an attorney (i.e., what if Coats had filed a cross-motion for summary judgment against Ward). But Coats' speculative conjecture is irrelevant, since Utah law provides that parties that represent themselves will be held to the same standard of knowledge and practice as a qualified member of the bar. Hampton v. Professional Title Services, 2010 UT App. 294 ¶ 3.

the trial court's decision, summary judgment in favor of Ward should be sustained.

Because cotenancy creates a cooperative community of interest dependent upon good faith, Utah law imposes duties and obligations upon cotenants. Coats seeks refuge from liability by claiming that the trial court predicated its grant of summary judgment on the narrow grounds that Coats was obligated to agree to escrow the proceeds of the sale. According to Coats' brief, his failure to agree to Graydon's conditions on the sale of the property was the only transgression alleged by Ward, and therefore must have been the basis for the court's decision. This is simply incorrect. Ward's legal proposition, upon which the court granted summary judgment, is the broader point that by virtue of their joint interests, cotenants stand in a unique relationship to one another, and that under the specific and unusual facts and circumstances of this case, Coats' refusal to cooperate in the sale of the property violated the reciprocal obligations inherent in the community of interest shared by Graydon, Coats, and Ward.

Utah law recognizes that a special relationship of confidence and trust exists among cotenants. In *Jolley v. Corry*, 671 P.2d 139 (Utah 1983). Utah's Supreme Court reaffirmed the existence of such a relationship and indicated that it necessarily included the imposition of obligations upon

cotenants. Without reaching the question of whether those obligations rose to the level of a fiduciary duty, the *Jolley* Court concluded that the relationship among cotenants precluded one from defaulting on an obligation and then attempting to extinguish the interest of the others by purchasing the property at a foreclosure sale. While the Utah Supreme Court in *Jolley* opted not to decide whether a cotenant is under a fiduciary duty in every conceivable circumstance, the Court made two points clear: 1) in at least some circumstances, cotenants have a fiduciary duty to one another; and 2) without using the label of “fiduciary,” cotenants have obligations to one another, the violation of which warrants legal redress. Whatever we call these responsibilities, whether fiduciary duties, reciprocal obligations, or otherwise, is immaterial; regardless of the label, mutual duties are an innate part of membership in the community of interest among cotenants. At the very least, this duty includes an obligation to not obstruct or impede a cotenant’s efforts to enjoy his interest in the property.

In the present case, the actions of Coats and Graydon have jointly denied Ward the value of the property he owned as a cotenant. Unlike Coats’ attenuated theory relating to a nonexistent duty to escrow the proceeds of the sale, Coats and Graydon engaged in a dangerous course of conduct that fundamentally deprived their cotenant, an innocent third

party, of his interest in the property. Coats' and Graydon's obstinate intransigence in the face of certain injury was more than a simple exercise of their right to be stubborn; it was a breach of their obligations to their cotenant.

As a part of their divorce proceedings, and more than a year before the events giving rise to this action, Coats and Graydon had been ordered by the court to sell the property in dispute. Despite having had a year in which to sell the property, by January 2007 no purchaser had been found and the property was being foreclosed on. With a trustee's sale scheduled for 17 February 2007, Coats and Graydon knew that if they failed to sell the property prior to that date, it would be subject to a foreclosure sale at a substantially lower price than a private transaction would bring. None of the parties involved dispute that the value of the property was at least \$5.2 million, an amount well above the price it would sell for at a trustee's sale. In other words, Coats and Graydon absolutely knew that if the property did not sell before February 17. both of them, along with their cotenant Ward, would lose a significant amount of money. Yet even in the face of this certain loss, they opted for a resolute and unyielding state of paralysis. Despite a binding agreement to sell the property to Hagen, Coats and Graydon allowed their tangential divorce to obstruct their clarity of thought.

and chose financial dissipation instead of cooperation and compromise.

Coats seeks to justify his actions on the grounds that his refusal to agree to escrow the proceeds of the sale was reasonable and within his rights; it was neither. At the time Coats had two alternatives: agree to escrow the proceeds in order to complete the sale to Hagen; or refuse, let the agreement dissolve, and suffer a loss in foreclosure. He had absolutely nothing to lose by agreeing to escrow, as under either alternative, Coats' proceeds from the sale would be subject to division in the pending divorce. Thus, his choice involved only the amount, not the outcome, of the proceeds of the sale. Had Coats agreed to escrow those proceeds, he stood to make more money. Instead, he refused, received a significantly diminished return, and had to pay Graydon the value of her resulting loss. In no way were his actions reasonable. And while Coats—and Graydon for that matter—may have the right to engage in the frivolous economic waste of their marital assets, those rights terminate when their actions impact the interests a third party. In light of the fact that he knew it would injure Ward, Coats' obdurate refusal to escrow the money was not within his rights.

Under the circumstances of this case, Ward is similar to a minority shareholder in a closely held corporation. Holding less than 10% of the interest in the property, Ward was at the mercy of the majority owners,

Coats and Graydon. As a minority owner of a nonliquid asset with no market, Ward was left vulnerable with no ability to protect his interest. His only hope was that his cotenants would act fairly and in good faith. Their failure to do either warrants the imposition of liability for their breach of the obligations imposed by their duties as cotenants. As a result, the trial court's grant of summary judgment should be sustained.

III. NO ABUSE OF DISCRETION OCCURRED BELOW

Coats misses the mark with his arguments about evidence marshaling and his addendum attempting to demonstrate his efforts at same. Evidentiary arguments are inappropriate here. Evidence is offered for the purpose of establishing facts. The facts in this case became undisputed when Peter Coats failed to controvert them at the summary judgment stage.² As such, whether it was proper for Michael Ward to receive judgment against Coats in the proceedings below was purely a question of law at both the summary judgment and Rule 59 stages. Sufficiency of evidence was a wholly inappropriate standard for Coats to rely upon at the Rule 59 stage. The portion of Rule 59(a)(6) dealing with sufficiency of evidence applies to situations where verdicts have been

² Moreover, Coats acknowledges still that the facts in this case are undisputed. Brief of Peter Coats 10.

rendered after parties have presented evidence at trial—not to uncontroverted summary judgment motions, where facts were established by either agreement or failure to controvert the movant’s version of them. If the court ignored Coats sufficiency-of-evidence claims at the Rule 59 stage, it was because they were irrelevant. There were—and still are—no findings of fact in the case to challenge. Coats’ entire addendum to his brief, along with the argument it contains, simply serves to confuse the issue.

The only pertinent question during the Rule 59 stage was whether the judgment against Peter Coats was correct as a matter of law. By quoting language from Judge Lindberg’s Minute Entry Order in his own brief, (reproduced in section I above) Coats has shown that the trial court engaged in a legal analysis on that question, and declined to reverse its earlier decision.

Furthermore, Coats misapprehends the legal standard involved in a Rule 59 motion. For example, a court “has no discretion to grant a new trial absent a showing of one of the circumstances specified in Utah R. Civ. P. 59(a).” Coats has failed to state in his brief in what manner he, or anyone else made a showing of any of those circumstances (other than the previously mentioned “sufficiency of evidence” argument), and thus has not

even demonstrated that the court below ever had the option of granting a new trial.

Coats seems to simply make the argument that the court's supposed abuse of discretion lay in its failure to reverse itself and find for Coats the second time around. Indeed, at another prominent point in the argument, Coats asserts that "Peter's action [in refusing the escrow arrangement] was not unlawful, in breach of contract, or in violation of any court order" Coats follows this conclusory language with yet another assertion that "the evidence is clearly insufficient that he did anything intentionally or wrongfully to prevent the sale of the property to Mr. Hagen." In fact, there is much about Coats' behavior that wrongfully prevented the sale. As a cotenant—and therefore a fiduciary—of Michael Ward, Coats was under an obligation not to diminish the value of the property. Coats was under an obligation to sell the property, both from an order of the divorce court, and from the impending trustee's sale attendant to Isabel Coats' foreclosure. He had a duty to ensure that the impending and inevitable sale net as much profit as possible. His intransigence in refusing to cooperate, along with that of Caroline Coats Graydon, ensured the demise of the Hagen deal, and thereby diminished the value of Michael Ward's interest in the property.

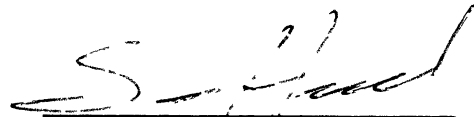
Peter Coats has failed to make a coherent legal argument in support of his abuse of discretion claim. Furthermore, Coats has failed to allege any pertinent facts in support of that claim. Accordingly, that claim must fail.

CONCLUSION

For the foregoing reasons, Appellant/Cross-Appellee Michael Ward respectfully asks this Court to uphold the trial court's award of summary judgment to Michael Ward against Peter Coats.

RESPECTFULLY SUBMITTED this 22 day of November, 2010.

STEVENSON & SMITH, P.C.

A handwritten signature in black ink, appearing to read "Brad C. Smith", written over a horizontal line.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, postage prepaid, two true and correct copies of the foregoing document to each of the following individuals:

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