1979

Douglas Fairbanks Close v. Allene Close Adams : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE

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BRIEF OF RESPONDENT

NATURE OF THE CASE

Each of the parties to this cause of action served a complaint upon each other, with the Court subsequently issuing an order to consolidate the two complaints into one cause of action. The issue proposed to be litigated by the Respondent was for the Court to make a determination that the decedent intended to convey her assets by making a conveyance of all of her stock in Utah Power & Light Company to the Appellant, and to convey the home, which was owned by the decedent, by a Warranty Deed to her daughter, with the daughter to have a total vested right of survivorship in the home upon the demise of the decedent.

The Respondent filed a lis pendens at the time of the filing of her complaint, and prayed the Court to enter a judgment that the subsequent conveyance of the real property by the decedent to the Appellant was an invalid conveyance and done by reason of the undue influence of the Appellant at a time when the decedent was 89 years of age, and incompetent, and further seeking if the Court should uphold the conveyance and severing of the joint tenancy of the property as between the decedent and the Respondent, that the Court take into consideration the assets conveyed to the Appellant at the time of the conveyance by the decedent of the real and personal property to both the Appellant and Respondent and that there be an equal distribution of all of the assets of the decedent.

DISPOSITION IN LOWER COURT

Upon the matter coming to trial and being heard before the Honorable Ronald O. Hyde, the Court held that the real property having been conveyed by a Warranty Deed to the Respondent and the decedent in joint tenancy, and the decedent having predeceased the Respondent, that there was a vesting of the Estate of the decedent in the surviving joint tenant, and that the conveyance of the real property prior to the demise of the decedent by the giving of a Quit Claim

Deed was a unilateral act that did not determine and terminate the joint tenancy. The Court thereupon granted judgment to the Respondent.

STATEMENT OF THE FACTS

To clarify the parties to this cause of action, the Respondent will refer to Edith L. Branscomb, the mother of both of the parties to this action as the "Mother", and will refer to Respondent as the "Daughter", and will refer to the Appellant as the "Son". The mother became demised in December, 1978, at the age of 90 years. (R-120)

On May 1, 1962, the Mother conveyed, by Warranty Deed, a joint tenancy to the real property which was the home of the Mother, by conveying her home to both herself and to her Daughter, while at the same time she conveyed her Utah Power & Light stock in joint tenancy by conveying same to herself and to her Son. (R-35)

The shares in Utah Power & Light were conveyd by the Mother to her Son, on March 20, 1962 (R-38), and the number of shares which were conveyed by the Mother to the Son, was 740 shares, which subsequently split two for one, and now totals 1,480 shares. (R-37, 38).

The Mother transferred the same property which she had conveyed by Warranty Deed to her Daughter, by transferring same to her Son by a Quit Claim Deed on July 29, 1977 (R-42), the Mother being 89 years of age at the time of such transfer of the property by Quit Claim Deed to the Son. (R-46)

In January, 1977, the Mother was admitted to the hospital, suffering from a massive stroke, which occurred in January, 1977, and in the opinion of her attending physician, Dr. C. Basil Williams, "she was not thereafter competent to make sound decisions without relying upon her family to make the decisions". The hospital records show that the Mother was unable to give a medical history at the time of her admission, and in the opinion of the attending doctor was not competent to make and understand decisions requiring competency. (R-46)

In the Statement of Facts of the Appellant, allegation is made on Pages 2 and 3 of Appellant's Brief, that the relations between the Mother and Daughter deteriorated, and that thereafter the Mother quit claimed the property to the Son. The citations given in the Brief are TR-41 and TR-46, as authority for this statement, and there is nothing in the record on either TR-41 and TR-46 or the court stenographer's

numbers on the transcript, which for TR-41 would be R-119 and for TR-46 would be R-124, that in any way substantiate or justify such a statement as a Statement of Facts.

The testimony of a Mrs. Arnold evidences to the contrary. Mrs. Arnold was employed for a period of two years, prior to the demise of the Mother, to care for her at the home of the Mother, and that she cared for her from Monday through Friday 5:00 o'clock p.m.; and that from 5:00 o'clock p.m. Friday until Sunday morning, the Daughter moved in and cared for the Mother, and that the Son cared for the Mother on Sunday. (R-117, 118)

ARGUMENT

POINT I

THE PROPERTY CONVEYED BY WARRANTY DEED IN JOINT TENANCY CANNOT BE UNILATERALLY TERMINATED BY JOINT TENANT CONVEYING QUIT CLAIM DEED.

In Nelson v. Davis, 592 P.2d 594, (February 23, 1979, S.Ct. of Utah), the court held that where husband and wife were joint tenants in real property, that a declaration unilaterally made by the wife continued until the wife's death, and then vested in the husband as her survivor.

In the Nelson case, supra, the husband and wife were joint tenants in the property, and the wife, in an attempt to avoid the possible consequence of a divorce decree, con-

veyed by a quit claim deed her property interest as a joint tenant to her daughter, and subsequently the wife became demised and the daughter made claim against the property as a substituted party in interest, as tenant in common in said property.

The Utah Supreme Court stated that the effect of terminating a joint tenancy and converting the tenancy into a tenancy in common is not accomplished by a mere unilateral declaration of termination of such a tenancy, since such a declaration is a nullity, which has no effect upon the joint tenancy of the husband, who was the joint tenant, and did not vest in the daughter, an interest as a tenant in common, when the mother who had conveyed the interest to the daughter, became demised, in that the surviving spouse had an estate in the property that vested upon the wife's death, and could not be divested by such a unilateral conveyance.

The Honorable Ronald O. Hyde, made a findings as follows:

> I find that the giving of a Quit Claim Deed is a unilateral act and does not terminate a joint tenancy. Insofar as a joint tenancy is concerned, the act is a nullity which has no effect upon the joint tenancy.

The Court thereupon rendered judgment for the Daughter and against the Son, finding that the conveyancy was a nullity. (R-60)

In Mannausa v. Mannausa, 375 Mich.6, 150 N.W.2d 900, (S.Ct. of Mich., 1964), the court held that where a joint tenant sold the property without consent of the other joint tenant who had the right of survivorship, and who did in fact survive the first joint tenant, the surviving tenant had a right to all proceeds of the sale.

In Ames v. Cheyne, 296 Mich.215, 287 N.W.439, S.Ct. of Mich. (September, 1939), the court held that where property stands in the name of joint tenants, with the right of survivorship, neither party may transfer the title to the premises and deprive the other of such right of survivorship. The Supreme Court of Michigan has held in affirmation of this rule in Schulz v. Brohl, 116 Mich.603, 74 N.W.1012; Finch v. Haynes, 144 Mich.352, 107 N.W.910.

POINT II

CONVEYANCE OF PROPERTY INTEREST BY INCOMPETENT PERSON IS A NULLITY.

The Mother, by conveying to her only two children, the only major assets which she owned in 1962, evidenced a desire to make unneccessary the making of a Will by the division of her Estate in conveying of the Utah Power & Light stock to the Son, and the home to the Daughter, both

of which conveyances were made with the Mother retaining joint tenancy in both the personal property of the stock and in the real property. (R-35)

The Mother did die intestate at the age of 90 years, becoming demised in 1978, and the conveyance of the stock and the home was made in 1962. (R-43)

The subsequent deteriorating illness of the Mother and her conveyance in 1977 at the age of 89 years, by Quit Claim Deed of the real property to the Son, following her stroke requires evaluation of her competency and factors of duress and influence in depriving her Daughter of her share in the Estate.

The intervening serious illness of the Mother, and the statement in the medical records of her attending physician, Basil Williams, at the time of her admission to the hospital in January, 1977, when she suffered from a massive stroke that the Mother was not competent to make a sound decision without relying upon her family, makes serious implications as to the ability of the decedent to understand the legal effect of making the Quit Claim Deed to the Son. (R-46)

The Court did not allow introduction of evidence by the Daughter as to medical testimony, in that the Court, while allowing whatever witness were present to testify, stated that the testimonies of the witnesses were not material, in

that the Court had decided the issue upon the belief of the Honorable Ronald O. Hyde, that the conveyance of a Quit Claim Deed was a nullity, and did not sever the joint tenancy between the Mother and the Daughter, and that the Mother, having become demised, the right of survivorship passed the total Estate to the Daughter, as to the real property, and the Court stated that the evidence would be pursued if the Court felt that the facts already presented to the Court as to the status of the tenancy was not sufficient upon which to base an ultimate decision. (R-125)

The Court did thereafter, render a decision and judgment (R-65) finding that the Quit Claim Deed conveyance was a nullity and that the property was vested in the Daughter.

The Daughter was prepared to present the testimony of Dr. Basil Williams and a number of other persons, as to the serious disability of the Mother, as the result of the stroke in January, 1977, and that the subsequent conveyance of the Quit Claim Deed in July, 1977, by the Mother to the Son, (R-42) could not be valid in that the Mother was incompetent and was in fear of being sent to a rest home, and therefore the Son exerted undue influence in promising to allow her not to be taken to a rest home and in obtaining the Quit Claim Deed from the Mother, which together with the Utah Power & Light stock which had been conveyed by the

Mother previously, placed in the Son, all of the assets of the Mother's Estate, for the sole benefit of the Son, and with no comparable part of the Estate going to the Daughter.

Mrs. Arnold, who lived and attended to the Mother for approximately the last two years of her life, stated that the Mother, at numerous times, told her that her Daughter was going to have the house. (R-120-124)

CONCLUSION

It is submitted to this Honorable Court that the Lower Court should be upheld in that the finding of the Court that the decisions of a right of survivorship to the surviving person of a joint tenancy could not be accomplished by the unilateral act of a joint tenant destroying a joint tenancy created by a Warranty Deed by the granting of a subsequent Quit Claim Deed, and that in any event equity would require that the intent of the Mother should be carried out, which was evidenced by her division of the stock to the Son and the home to the Daughter, and that the further question of the competency of the Mother to convey by Quit Claim Deed at the age of 89 years, and subsequent to a time when she had suffered a massive stroke, and had questionable ability to understand the nature of her act, together with the question of whether or not there was undue influence on the part of

the Son upon his 89 year old Mother, in having her convey to him the real property, in addition to the personal property is a matter that should be remanded if the Court should hold that the tenancy that existed could have been severed by the Quit Claim Deed, so that a full hearing on all of the issues pertinent to the further equitable and legal principles involved in the matter can be adjudicated by the Court.

Respectfully Submitted,

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CERTIFICATE OF MAILING

A copy of the foreging Brief of Respondent was posted in the United States Mail, postage prepaid and addressed to the Attorney for the Appellant, Clarence J. Frost, Esquire, Attorney at Law, 3536 Market Street, Granger, Utah, 84119, on this 15 day of February, 1980.

Loreen Barrett

Loreen Barrett, Secretary