

1978

Jack E. Blankenship v. Zane Christensen, Et al. : Brief of Appellant

Utah Supreme Court

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John C. Beaslin; Attorney for Appellant;

George E. Mangan & Robert L Moody; Attorneys for Respondents;

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IN THE SUPREME COURT OF THE STATE OF UTAH

JACK E. BLANKENSHIP,

Plaintiff-Appellant,

vs.

Case No. 16770

ZANE CHRISTENSEN, FLORA CHRISTENSEN,
CALVIN J. JENSEN, LORNA JENSEN,
JESS W. CHRISTENSEN, BEATRICE
CHRISTENSEN, PAUL CHRISTENSEN, LEAH
CHRISTENSEN, MILES H. CHRISTENSEN,
DORIS CHRISTENSEN, EVA JANE ROWLEY,
and DEE E. CHRISTENSEN,

Defendants-Respondents.

BRIEF OF APPELLANT

AN APPEAL FROM A WRITTEN RULING OF THE
FOURTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY, STATE OF UTAH
The Honorable J. Robert Bullock, Judge

JOHN C. BEASLIN
BEASLIN, NYGAARD, COKE & VINCENT
Attorneys for Appellant
185 North Vernal Avenue #1
Vernal, Utah 84078

GEORGE E. MANGAN
P. O. Box 246
Roosevelt, Utah 84066

ROBERT L. MOODY
CHRISTENSEN, TAYLOR & MOODY
55 East Center Street
Provo, Utah 84601

Attorneys for Respondents

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STATEMENT OF THE NATURE OF THE CASE

Plaintiff Appellant brought this action to quiet title to certain properties located in Duchesne County conveyed to him by a quit-claim deed.

DISPOSITION IN LOWER COURT

The Honorable J. Robert Bullock by a written decision dated September 21, 1978, found that the Plaintiff as assignee of a claimed interest from Enid Christensen received nothing to convey as she received nothing from the Estate of Marion H. Christensen, deceased.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower court's ruling and quieting title in Appellant to a one-seventh (1/7th) undivided interest described in his quit-claim deed from Enid Christensen. Appellant claims his interest from an assignment from one of the heirs of Marion H. Christensen and not from the Estate itself.

STATEMENT OF THE FACTS

On or about October 23, 1968, Marion H. Christensen, the father of Dee E. Christensen died testate in Duchesne County, State of Utah. On July 7, 1969, the Court ordered the approval of the petition of the Executor of the Estate of Marion H. Christensen and distribution of the assets to the heirs. The

Defendant, Dee E. Christensen, was one of the heirs and he received an undivided one-seventh (1/7th) interest in and to certain real and personal property of the decedent.

On July 22, 1969, in Fremont County, Wyoming, Enid Christensen, the wife of Dee E. Christensen secured an assignment from the said Dee E. Christensen of his one-seventh interest to the property in the Estate of Marion H. Christensen

On July 22, 1969, the said Enid Christensen obtained a decree of divorce from the said Dee E. Christensen and the decree specifically states that all real and personal property from the Estate have been assigned to Enid Christensen. The said property is to be set over to Enid Christensen as her absolute property.

On July 22, 1969, the same Judge granting the divorce signed commitment papers for Dee E. Christensen to the Wyoming State Hospital for acute alcoholism.

On August 1, 1969, Enid Christensen filed with the Clerk of the Court a "Notice of Interest" in the Estate of Marion H. Christensen.

Also, on August 1, 1969, Judge Joseph E. Nelson executed a written order for the distribution of the assets in the Marion H. Christensen Estate. The Order of the Court, however, was not filed with the Clerk until August 4, 1969, and recorded the same day in the Duchesne County Recorder's Office.

On November 21, 1969, Enid Christensen caused her "Notice of Interest" and her "Assignment" of interest in the Estate from Dee E. Christensen to be recorded in Duchesne County.

December 3, 1975, the Appellant, Jack Blankenship, obtained a quit-claim deed from Enid Christensen, now Kolarich, for the sum of TWO THOUSAND DOLLARS (\$2,000.00). The deed conveyed all of the real and personal property awarded to Dee E. Christensen from the Estate of Marion H. Christensen except the property in Section 19, Township 1 South, Range 5 West, U.S.M. that had been conveyed to David Sam and his brothers in March of 1971.

The Defendants refused to recognize the interest of the Appellant and he filed a complaint to quiet title to the interest conveyed to Enid Christensen Kolarich in July, 1969, and later conveyed to Appellant.

ARGUMENT

POINT I

THE COURT ERRED IN NOT FINDING THAT THE UNDIVIDED ONE-SEVENTH (1/7th) INTEREST CONVEYED BY ENID (CHRISTENSEN) KOLARICH TO THE APPELLANT WAS VALID, AND IN NOT QUIETING TITLE IN THE PLAINTIFF.

The Appellant contends that the said Enid Christensen (Kolarich) did in fact receive an interest from Dee E. Christensen by his assignment to her of his interest in his father's estate.

This is substantiated on the basis of the assignment dated July 22, 1969, filing the same with the Clerk of the Court on August 4, 1969, and recording the same in November, 1969 with a "Notice of Interest" describing the property from the Estate and her interest thereto. The Court had already made its order approving the distribution of the property of the Estate to Dee E. Christensen on July 7, 1969, and the Order and Decree following were just a formality for the Court.

At the time the assignment was made Dee E. Christensen had received his interest from his father's Estate and could assign his interest in the same. He did this and also the Decree of Divorce in Wyoming stated that he had assigned his interest to Enid. All of these events happened after the July 7, 1969, Order approving the distribution.

Also we find in Chamberlain, et al. v. Larsen, et al., 83 U 420, 29 P2d 355 (1934) as follows:

"upon the death of the decedent, the title to any property of which she died possessed immediately passed to and vested in her heirs, subject to administration and the payment of debts. The purpose of an adjudication of heirship is not to vest title, but to adjudicate where the title of the decedent has already vested."

Title in this case had already vested in Dee E. Christensen at the death of his father and he had a right to assign his interest and he did so by his own act and deed.

In the assignment (Exhibit P2) dated July 22, 1979, the assignor, Dee E. Christensen clearly intended to convey all of his right, title, and interest from his father's estate to his wife, Enid Christensen. The assignment states both real and personal property, the quit claim deed (Exhibit P3) to the appellant conveys all the interest she had including real and personal property including minerals.

Generally, a vested interest in a decedent's estate is assignable. In this case the person to receive the assignment (Enid) is certain and the property conveyed is certain. (See 6 Am. Jur. 2d Section 23 - 26, P. 209).

Based upon the documents filed herein, it is clear that Dee E. Christensen, after his father's estate was closed on July 7, 1969, had a vested interest he could convey and he did convey that interest by his assignment and the Decree of Divorce in the State of Wyoming. Enid Christensen, his wife, therefore was not required to reopen the Estate and have the executor of the Estate convey to her by a new decree because Dee assigned his vested interest to her. Based upon her assignment having validity it follows that she was in a position on December 3, 1975 to convey her interest to Jack Blankenship, the Appellant herein.

The record also shows that at no time did Enid Christensen Kolarich ever convey to any other member of the Christensen

family any interest she had in the real or personal property she received from Dee and he from the estate of his father. Enid and Dee did join in a conveyance to David Sam and his brothers in the eighty acres in Section 19. No other conveyances were of record by Enid at the time she conveyed to Blankenship.

The so called arrangement between the family of Christensen of the property by agreement in 1970 (T. 38) did not include Enid and she did not join in any conveyances to the other Christensens and she was not bound by their acts. She retained her full one-seventh (1/7th) interest to all of the land she conveyed to Blankenship except that piece going to the Sams and that was not included on her deed to Blankenship.

Blankenship paid Enid the sum of TWO THOUSAND DOLLARS (\$2,000.00) for the interest and is a Bona Fide purchaser for value of her interest.

The Respondents make an issue about the fact that the Appellant is an experienced landman and searched the records personally. (Section T. 14-15) Actually the record (T.13) discloses that Appellant had a title opinion from two attorneys Dale Kimball and Kent Peterson, who also concluded that Enid Kolarich had an interest that could be conveyed to the Appellant. Based upon his own personal research, plus the opinions of two attorneys, he paid Enid TWO THOUSAND DOLLARS (\$2,000.00) for

her interest conveyed from her then husband, Dee Christensen.

POINT II

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
DO NOT CONFORM TO THE EVIDENCE AT THE TIME OF TRIAL.

The Appellant takes issue with the Findings of Fact,
Conclusions of Law and Judgment signed by the Court.

The Court erred in finding number 4B as to the fact that
Dee E. Christensen was then mentally ill...Lacks sufficient
capacity to make responsible decisions..." One should keep
in mind that this is a form used in the State of Wyoming and
Dee was committed for chronic alcoholism. His mental capacity
for competency was never adjudged.

Clearly the admission to the State Hospital of Wyoming for
that purpose did not render him incompetent to execute the
assignment of July 22, 1979.

The Wyoming Statute is clear that a specific adjudication
of competency must be established. See 25-3-124(d) Wyoming
Statute 1977 as follows:

"Each patient shall be entitled to exercise all civil
and contractual rights, including the right to dispose
of property, execute instruments, make purchases,
enter into contractual relationships, and vote, unless
he has been specifically adjudicated incompetent to
exercise the same in such manner as may be provided by
law and has not been restored to legal capacity."
(Laws 1963 Ch 188 Sec 24).

Also see 25-3-125 Wyoming Statute 1977 as follows:

"The admission to a hospital under any provisions of this act shall not create a presumption with respect to the patients mental or legal competency to exercise civil, contractual, or other rights for which there may exist a legal standard of competency. Admission to a hospital under any provision of this act, without further proof of lack of competency to handle his own affairs, shall not be sufficient cause for guardianship of the person or estate of any patient hereunder." (Laws 1963 Ch 188 Sec 25).

Dee E. Christensen was never declared incompetent and the record is clear as to that fact and it was error to place the same in paragraphs 4B, 5 and 6.

Objection is made to paragraphs 7, 9, 17, and 18, as there was nothing Enid had to do with her assignment except record it with the Clerk of the Court which she did on August 1, 1969, and record her interest with the Duchesne County Recorder which she did on November 21, 1969. Her assignment of the interest in the Estate was prior to the Order of the Court being filed with the Clerk's Office of Duchesne County telling all the world that Dee has assigned his total interest to her in the Estate.

Objection is made to paragraph 12 as the Appellant's assignor, Enid, was not a party to the family agreement or arrangement of the property. She never gave up her interest in the property.

Appellant objects to the Findings, the Conclusions of Law and Judgment as the same do not follow from the evidence

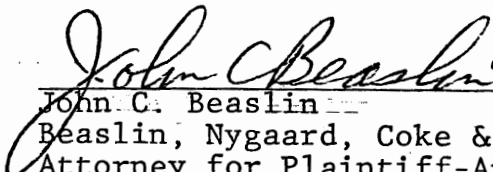
produced at the trial.

The evidence is clear that Dee E. Christensen had the mental capacity to do what he did and that was to convey all his interest to his wife who then conveyed that interest to the Appellant, Jack Blankenship.

CONCLUSION

Appellant submits that the Lower Court's ruling should be reversed and this Court should quiet title in the Plaintiff-Appellant to the property set forth on the quit claim deed from Enid Kolarich (Exhibit P-3) based on the facts as set forth and the record before this Court.

Respectfully submitted this 16th day of April, 1980.


John C. Beaslin
Beaslin, Nygaard, Coke & Vincent
Attorney for Plaintiff-Appellant
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078

Mailed or delivered this 16th day of April, 1980,
postage prepaid, two copies of the foregoing Brief of Appellant to George E. Mangan, P. O. Box 246, Roosevelt, Utah 84066, and Robert L. Moody, 55 East Center Street, Provo, Utah 84601, attorneys for Respondents.


John C. Beaslin