

1980

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JACK E. BLANKENSHIP,)
)
Plaintiff-Appellant,) Case No. 16770
)
vs.)
)
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.)

REPLY BRIEF OF RESPONDENTS

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

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IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.)
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JESS W. CHRISTENSEN, BEATRICE)
CHRISTENSEN, PAUL CHRISTENSEN, LEAH)
CHRISTENSEN, MILES H. CHRISTENSEN,)
DORIS CHRISTENSEN, EVA JANE ROWLEY,)
and DEE E. CHRISTENSEN,)
Defendants-Respondents.)

REPLY BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

Plaintiff-Appellant brought this action to quiet title and to assert an ownership interest in and to certain properties and mineral rights located in Duchesne County, State of Utah. Defendants defended on the basis that plaintiff had no legal or equitable interest in the land.

DISPOSITION IN LOWER COURT

Honorable J. Robert Bullock held that plaintiff, as assignee of a claimed interest from Enid Christensen Kolarich (hereafter Enid), received nothing by way of Enid's quit claim deed to plaintiff, and that Enid had been fully satisfied as to any claim she had in the estate of Marion H. Christensen, deceased, hereafter referred to as decedent, prior to the time of her

conveyance to the plaintiff.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the lower court's ruling affirmed.

STATEMENT OF THE FACTS

Defendants believe the Statement of Facts filed by the Plaintiff to be too brief and sketchy. Defendants submit the following as a statement of the facts that are in keeping with the expressed Findings of the Court.

On or about October 23, 1968, decedent, who was either the father or father-in-law of all of the defendants, died testate in Duchesne County, State of Utah. On July 7, 1969, the District Court of Duchesne County ordered the approval of the petition of the executor of the estate of decedent and authorized the distribution of the assets to the heirs. Because one of the natural children of decedent was also deceased, as a matter of convenience, the issue of said deceased child received their portion of the estate in cash, and decedent's real and mineral property was ordered to be distributed so that the living children of the decedent each received an undivided one-seventh (1/7) interest in the remainder.

At the trial the decedent's executor testified that the heirs had, prior to July 1, 1969, decided as to what portion of the real and mineral property each of them would receive. For reasons not introduced at the trial, the written order approving

the executor's petition was not signed until August 1, 1969, and was not filed with the clerk of the court until August 4, 1969.

Both on and prior to July 22, 1969, the defendant Dee Christensen and his then wife, Enid, were residing in Evanston, Wyoming. On July 22, 1969, the following events occurred:

1. Enid secured an "assignment" from the defendant Dee Christensen of his interest in the estate of decedent. (See Exhibit P-2, Pg. 2).

2. Enid filed a petition to have the defendant Dee Christensen, involuntarily committed to the Wyoming State Mental Hospital at Evanston, Wyoming, because of alcoholism. In the Order of Involuntary Commitment, the court found that the defendant "Dee E. Christensen is mentally ill, and because of his illness, is likely to injure himself or others. . . , and because of his illness, lacks sufficient capacity to make responsible decisions. . . ." (emphasis added) (see Exhibit P-5).

3. Enid secured a decree of divorce from the defendant Dee Christensen.

On or about August 1, 1969, Enid caused a "Notice of Interest" to be filed with the Clerk of the trial court in Probate 1209. No copy of said "Notice of Interest" or of the July 22, "Assignment" was sent or alleged to have been sent to either the executor or any of the other heirs. Likewise, it was not alleged or suggested that either Enid or her assignee, the plaintiff, ever attempted to seek or to compel the executor to comply with the terms of said alleged assignment.

About the middle of August, 1969, Dee Christensen did "leave" the Wyoming State Mental Hospital at Evanston, Wyoming. On or about November 21, 1969, Enid did cause a Notice of Interest to be recorded with the Duchesne County Recorder. (See Exhibit P-2).

During 1970 the seven living children of the decedent, including the defendant Dee Christensen, did execute and exchange deeds between themselves whereby each did receive what they had agreed prior to July 1, 1969, to be their one-seventh (1/7) share of the estate of their father. Said deeds were duly recorded in the office of the Duchesne County Recorder. To this point, neither the heirs nor the executor of decedent's estate had been given any notice, written or verbal, of the claim of Enid, and no actions had been taken in the probate file of decedent, to alter, modify, amend or change the terms of the Decree of Distribution. In that partitionment of the decedent's real and mineral properties, Dee Christensen received 80 acres as his full share of the estate

In March or April, 1971, Judge David Sam and his brothers elected to purchase the 80 acres that had been deeded to Dee Christensen. At that time Judge Sam contacted Enid, who, by then was the former wife of said Dee Christensen, relative to her claimed interest in said estate. Enid requested \$5,000.00 of Judge Sam, for her share of or claim to decedent's estate. (See deposition of Judge Sam, [T.85]: Pg.6, line 23 thru Pg.7, line 2; Pg.8, lines 5-19; and Pg.13, lines 9-12.) It is to be noted that Judge Sam testified that he understood said \$5,000.00 was to be payment in full for any interest or claim of Enid in and to Dee Christensen's share of the estate of his father. Judge Sam, who was acquainted with Enid, concluded, after having paid Enid the \$5,000.00: "Well, based on my relationship with Enid, it would be

my opinion that she has no interest in the estate." (T.85: Pg.14, lines 15-17.)

The plaintiff is an experienced and seasoned "land-title" expert, who earns his living examining title to property in order to primarily determine and trace ownership of mineral rights. Based on his testimony, he does such work both personally and for other persons or companies. During 1973, while researching in this manner, the plaintiff ran across the "notice of interest" which Enid had caused to be recorded on or about November 21, 1969. At that time, he contacted Enid and offered to purchase her interest, but was rebuffed with silence. On or about December 3, 1975, by means not made clear at the trial, the plaintiff again made contact with Enid and consummated the purchase of whatever interest Enid then had in decedent's estate by means of a Quit Claim Deed for the sum of \$2,000.00. Plaintiff admitted that he had never attempted to get the final Order of Distribution amended. (T.113)

During 1976, plaintiff made demand upon the defendants for a one-seventh (1/7) interest in and to the estate of decedent. This was rejected. The defendant Dee Christensen then prepared and filed an affidavit (Exhibit 5) claiming the lack of mental ability or capacity to have executed the assignment on the date in question. Thereafter this litigation was commenced.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY HELD THAT THE QUIT CLAIM DEED FROM ENID (CHRISTENSEN) KOLARICH TO THE PLAINTIFF DID NOT CREATE AN INTEREST WHICH PLAINTIFF COULD QUIET TITLE TO.

A. AN ASSIGNEE STANDS IN THE SAME POSITION AS HIS ASSIGNOR.

This principle of law is so elementary and fundamental to American jurisprudence, that it scarcely needs repeating. An assignee can obtain nothing more and is subject to the same defenses, offsets, etc., as his assignor is or was subject to.

As a general rule, a valid and unqualified assignment operates to transfer to the assignee all the right, title, or interest of the assignor in the thing assigned, but not to confer upon the assignee any greater right or interest than that possessed by the assignor. 6 C.J.S., Assignment §82, pp. 1136-1137.

As a general rule, unless the assignment is invalid so that no rights against the debtor are transferred thereby, an assignee acquires all the rights possessed by the assignor against the debtor at the time of the assignment, and no more. 6 C.J.S., Assignments §100, p.1156.

As the assignee acquires against the debtor only the rights which were possessed by the assignor (see supra §100), the debtor may assert against the assignee any limitations or objections to which the claim assigned would have been subject in the hands of the assignor (see infra §114). 6 C.J.S., Assignments §113, p. 1164.

A cause of action which is assigned is generally subject to any right of recoupment, set-off, cross demand or counterclaim, as well as being generally subject to any right of compensation held by the obligor against the assignor before and at the time of the assignment or notice thereof, and this rule applies, although the assignor is bankrupt. In respect of such claims, the assignee ordinarily has no greater rights than the assignor, and the obligor is not by

reason of the assignment put in a worse position than if the action were by the assignor. 80 C.J.S., Set-Off and Counterclaim §54a, pp. 98-99.

Thus, no matter what consideration the assignee may pay to the assignor, that consideration cannot give the assignee any better position or right against a third person or party than the assignor had. See Wiscombe v. Lockhart Co., 608 P.2d 236 (Utah, 1980). These general principles of law were applied by the Utah Court as follows:

An assignment merely sets over or transfers the interest of one party in certain property to another. Such an assignment does not have the effect of cancelling any rights which other persons have in connection with such property. Tanner v. Lawler, 6 Utah 2d 84, 305 P.2d 882, 885, (1957).

See also Cheney v. Rucker, 14 Utah 2d 205, 381 P.2d 86 (1963).

B. PLAINTIFF'S ASSIGNOR WAS BARRED FROM ASSERTING ANY CLAIM AGAINST THE ESTATE OF MARION H. CHRISTENSEN, AND THUS PLAINTIFF WAS ALSO BARRED.

The trial court made detailed Findings of Fact and Conclusions of Law. Briefly stated the relevant ones are as follows:

A. On July 22, 1968, the defendant Dee Christensen was without sufficient mental capacity to make a valid assignment of anything. (T. 71)

B. On July 22, 1968, the defendant Dee Christensen had no power to direct the executor of the estate of Marion H. Christensen's Estate to do anything but comply with the order of July 7, 1968, regarding the distribution of the Estate. (T. 72)

C. Any claim of Enid Christensen [Kolarich] or the plaintiff, to any interest in the estate of Marion H. Christensen, had to be pursued in Probate No. 1209. (T. 74)

D. Any claim of Enid's was barred by the Statute of Limitations. (T 74)

The trial court thus specifically found that there were several bars to Enid's claim, which defendants could assert against the plaintiff, i.e., the lack of capacity of Dee Christensen to have made the assignment; the failure to pursue the terms of the assignment; etc.

Appellant makes much of the fact that in Wyoming a patient must be "specifically adjudicated incompetent" before he is legally incompetent to "dispose of property, execute instruments. . ." citing, Wyoming Statute, 1977 25-3-124(d). Defendants point out that the 1977 law plaintiff relies on is eight (8) years after the fact, and therefore not applicable to July 22, 1969. Furthermore, as is pointed out in the Statement of Facts, in Exhibit P-5 the Wyoming court in its order of Involuntary Commitment found that on July 22, 1969, Dee E. Christensen ". . . lacks sufficient capacity to make responsible decisions. . ." Thus, the argument raised by appellant is without merit for two (2) reasons. First, the law is not applicable, and second, even if applicable, it does not serve plaintiff any useful purpose under this factual situation since both our court and the Wyoming court specifically made the finding that Dee E. Christensen could not make responsible decisions on the day in question.

Notwithstanding, the above, and even if either of the courts had not found the above recited facts and had not reached the relevant conclusions, it was and still is obvious from the evidence before the court that plaintiff's claim was nevertheless

barred because it had been fully satisfied, and/or, the running of the Statute of Limitations. The trial court found that the heirs of the decedent had divided the estate in such a manner so that each of the seven (7) living children received their proportionate one-seventh ($1/7$) of decedent's real and mineral properties. In 1970 the defendant Dee Christensen received as his proportionate share, an 80 acre parcel, which "in March or April, 1971, the said Enid Christensen Kolarich did join with the defendant Dee E. Christensen in the sale of his $1/7$ interest in the real property he inherited from said estate, to David Sam and his brothers." (Findings of Fact, No. 13, T.73). As indicated above, it was the opinion of Judge Sam that the \$5,000.00 Enid then demanded was for any interest that she claimed in the estate of decedent (T.85: Pg. 6, line 23 thru Pg. 7, line 2; Pg. 12, lines 5-19; and Pg. 13, lines 9-12), and he concluded, "based on my relationship with Enid it would be my opinion that she has no interest in the estate." (T.85: Pg.14, lines 15-17).

Thus without any of the other findings by the trial court, the plaintiff would be barred from pursuing his claim, because all rights of Enid to the estate had been satisfied when she joined with Dee E. Christensen in the sale of Dee's $1/7$ interest to Judge Sam. None of the other heirs shared in the proceeds of that sale. Enid, got all she expected out of the estate. Her tacit approval and acceptance of the division of the estate made by all of the heirs, barred her and/or her assignee from any right to demand any additional part of decedent's estate.

Furthermore, the trial court found plaintiff's claim to be barred by the Statute of Limitations. Any interest the plaintiff might have in the real property and mineral rights of decedent's estate, arose by reason of the written instrument from Dee Christensen to Enid, dated July 22, 1969. All of Enid's "Notices of Interest," etc., were founded on the assignment from Dee, and the validity or applicability of said notices must rise or fall with that original assignment. The statute that apparently has application to this situation, is Title 78-12-23, U.C.A., 1953, as amended, which requires that any claim founded on an instrument in writing must be commenced "within six years." The assignment, an instrument in writing, was given July 22, 1969, and plaintiff's action was commenced July 19, 1976, almost seven (7) years later. The Assignment from Dee directed the "Probate Court of Duchesne County, Utah, to distribute to ENID CHRISTENSEN. . . all of my said interest in said estate." Neither Enid nor the plaintiff made an attempt to get the probate court or the executor to do anything. The executor was under an order of the Probate Court from and after July 1, 1969, to do certain acts. The executor could not vary from the court's order so as to comply with Enid's assignment, without leave of court. Neither plaintiff nor Enid sought to modify, appeal or stay the order of the trial court within the one (1) month required by Rule 73, U.R.C.P. Thus, by September 4, 1969, the Decree of Distribution had become binding upon the executor and all of the heirs. Title was then conveyed to the heirs and they were free

to divide the inherited property in any manner they chose. All of decedent's heirs agreed to a fair and equitable partitionment prior to July 1, 1969, which partitionment the heirs put into effect in 1970. In 1970, Dee Christensen received all that he was entitled to from decedent's estate. Enid recieved all she claimed she was entitled to in 1971 when she joined Dee Christensen in selling Dee's share to Judge Sam. The plaintiff neither denied that the division between the seven (7) children was equitable, nor alleged that it was unfair or an attempt to defraud anyone. The plaintiff did not produce his assignor as a witness to rebut any of the defenses raised by the defendants. The defenses thus raised by the defendants remained unchallenged before the Court, and were believed and adopted as findings by the trial court.

In passing, while appellant correctly states the general rule that from and after the death of the decedent the title to any property the decedent was possessed of "immediately passed to and vested in her [his] heirs, subject to administration and payment of debts" citing Chamberlin, et al. v. Larsen, et al., 83 Utah 420, 29 P.2d 355 (1934), appellant's reasoning and application of the general rule is not wholly correct. Even if the assignment of July 22, 1969, was originally valid, it was designed to serve as directions in a probate proceedings only, and it requested or directed the Probate Court [executor] to do certain acts, none of which Enid or plaintiff attempted to have the Probate Court [executor] perform. Thus, under the court

order, title to the subject property vested in the seven (7) children of the decedent, including Dee Christensen. Those seven (7) children could and did divide the property in the manner they felt was fair. Dee, and thus Enid, received all he or she was entitled to. Plaintiff cannot now be heard to say that he is still entitled to one-seventh (1/7) of what the other six (6) children received. To follow plaintiff's wishes, then Enid, after being satisfied from Dee's one-seventh (1/7) as to any claim, moral or otherwise she had on decedent's estate, can make an assignment to plaintiff, and plaintiff would get one-seventh (1/7) of what the other six (6) children received. That is not fair or equitable. As defendants would be able to raise defenses to Enid if she made such a claim, then under law governing assignments the defendants can raise the same defenses against plaintiff.

Respondents thus conclude that there was no error on the part of the trial court in barring the claims of the appellant. The quit-claim deed from Enid to plaintiff was subject to all the defenses the defendants had against Dee Christensen and/or Enid. The plaintiff cannot stand in a better position than Enid did. The trial court should be affirmed.

POINT II

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT DO CONFORM TO THE EVIDENCE AT THE TIME OF TRIAL.

The plaintiff assigns error to paragraphs 4B, 5 and 6, of

the Findings of Fact which deal with the incompetency of Dee Christensen on July 22, 1969. Defendants previously responded to that issue by pointing out that the statute plaintiff now relies on is a 1977 version of the Wyoming law. Plaintiff does not cite the 1969 law in Wyoming, nor did plaintiff cite any relevant statute at the time of the trial. The Trial Court gave "full faith and credit" to the July 22, 1969, pronouncement of the Wyoming Court. The plaintiff introduced nothing to negate the same, except for repeated references to the fact that Dee Christensen was committed for chronic alcoholism. Whether that is true or not has no relevance on the findings of the Wyoming and Utah courts. What was before the trial court was a Wyoming order that made it clear that on July 22, 1969, Dee Christensen lacked "sufficient capacity to make responsible decisions. . . ." Dee Christensen was not just admitted to the Wyoming State Hospital, but he was involuntarily committed. (See Exhibit P-5).

Plaintiff objects to paragraphs 7, 9, 17 and 18, of the Findings of Fact by alleging that Enid did all that she had to do by filing the assignment with the Clerk of the Court on August 1, 1969, and recording a Notice of Interest with the County Recorder on November 21, 1969. A careful reading of the Assignment makes it clear that Enid never attempted to do what the assignment required, i.e., to direct the Probate Court [executor] to do certain acts. Nothing in the assignment required the filing of the Notice of Interest on November 21, 1969. That notice was an unnecessary and legally meaningless act. The decedent's executor

proceeded to act in the manner he was authorized in open court on July 1, 1969, to do, namely to distribute the decedent's estate to the heirs. If Enid had petitioned the Probate Court or the executor for a change in the order, then that could have properly been considered by the Probate Court in 1969. However, since Enid allowed the Statute of Limitations to run, then plaintiff is barred both by Enid's inaction and the other defenses raised by the defendants. The trial court had all of the evidence before it, and in considering the same, made its Findings of Fact and Conclusions of Law. Plaintiff does not allege that the court abused its discretion, and the trial court's Findings should be granted the usual and customary presumption of correctness on appeal. (See R.C. Tolman Const. Co. v. Myton Water Ass'n., 563 P.2d 780 (Utah, 1977); First Security Bank of Utah, N.A. v. Wright, 521 P.2d 563 (Utah, 1974)).

Finally, plaintiff objects to paragraph 12 on the basis that Enid was not a party to any family agreement. It is true that Enid did not personally enter into the family agreement. However, it is clear that Enid was aware of and consented to the division at least when she joined with Dee in selling his one-seventh (1/7) of the decedent's estate to Judge Sam. Neither Enid nor Dee shared those proceeds with any of the other heirs of the estate. In Judge Sam's opinion, based on his relationship with Enid, Enid did not feel she had any more interest in decedent's estate. Perhaps that is why Enid rebuffed plaintiff so quickly in 1973, and why plaintiff could purchase all of

Enid's claim for only \$2,000.00 in 1975. She knew she had nothing coming, but if some "sucker" wanted to pay her for nothing, he could. Perhaps that is why plaintiff chose not to call Enid as a witness at the trial. To give plaintiff one-seventh (1/7) of the remaining six-sevenths (6/7) of the estate, for only \$2,000.00 is unconscionable and unfair.

As a final argument, defendants point out that this matter was tried on July 12, 1978. The Judge issued his memorandum decision on September 21, 1978. On October 22, 1978, defendants' counsel prepared and sent to plaintiff's counsel for approval as to form, the Findings of Fact and Conclusions of Law, and Judgment, which plaintiff's counsel was to send on to the court for signature and filing. Plaintiff's counsel retained said Findings, etc., until September, 1979, without advising defendants' counsel of anything. Finally, in September, 1979, plaintiff's counsel informed defendants' counsel of several objections to the Findings, etc. Because of the inordinate delay, defendants' counsel then submitted the Findings, etc., to the trial court without approval as to form for signature and filing. However, from and after October, 1978, through November, 1979, plaintiff never requested the trial court to alter, amend or reconsider its Findings of Fact, etc. Now on appeal, plaintiff attacks the Findings as not conforming to the evidence. Defendants suggest that the proper place to have first raised the issue would have been in the trial court, immediately following the trial. There is evidence to support all of the Findings,

etc., of the trial court, and this court should now affirm the same.

CONCLUSION

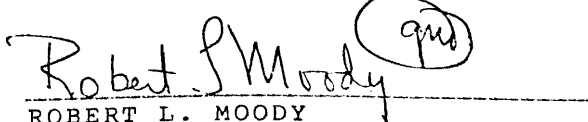
The ruling of the lower court should be affirmed in its entirety. The simple fact is that plaintiff received nothing from Enid that he can quiet title to. On December 3, 1975, Enid had nothing to assign to the plaintiff and plaintiff received just that. While the trial court found the assignment to have been invalid to begin with, even if it was originally valid, since the terms of the Assignment were never complied with and cannot now be complied with, the assignment was and is unenforceable; or even if Enid or plaintiff had complied with all of the terms of the Assignment, since, Enid joined in the transaction with Dee to sell to Judge Sam, then the Assignment was fully performed; and finally, even if the Assignment was not satisfied by performance, all of the rights under the Assignment were barred by the Statute of Limitations from and after July 22, 1975.

Respectfully submitted this 2nd day of June, 1980.

MANGAN & GILLESPIE


GEORGE E. MANGAN

CHRISTENSEN, TAYLOR & MOODY


ROBERT L. MOODY

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of June, 1980, I mailed a true copy of the foregoing REPLY BRIEF OF RESPONDENTS, to John C. Beaslin, Attorney for Appellant, 185 North Vernal Avenue, #1, Vernal, Utah 84078, postage prepaid.

Marie Bolton
Secretary