

1980

Victor Brown, Et al. v. Leon Peterson and Peterson Development Co. : Brief of Respondents Leon Peterson and Peterson Development Co.

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH.

* * * * *

VICTOR BROWN, et al,

Plaintiffs and
Appellants,

vs.

Case No. 16785

LEON PETERSON and
PETERSON DEVELOPMENT CO.,

Defendants and
Respondents.

* * * * *

BRIEF OF RESPONDENTS
LEON PETERSON AND
PETERSON DEVELOPMENT CO.

* * * * *

APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
HONORABLE DAVID K. WINDER, Judge

* * * * *

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FILED

MAY 5 1980

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BRIEF OF RESPONDENTS
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NATURE OF THE CASE

This action was commenced by Plaintiffs-Appellants, all property owners of Lots 36 through 46 of the Meadow Cove No. 2 Subdivision, against Defendant-Respondent Peterson Development Company to obtain title to a strip of land ("the disputed property") between the easternmost boundary lines of their respective lots and an old fence.

DISPOSITION IN THE LOWER COURT

In the lower court, the Honorable David K. Winder granted judgment in favor of Respondent and quieted title to the disputed property in Peterson Development Company.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the Findings, Conclusions and Judgment of the trial court.

STATEMENT OF MATERIAL FACTS

Respondent does not materially dispute the statement of facts contained in Appellant's brief, with the exception of certain statements which Respondent deems either to be inconsistent with the actual facts or self-serving conclusions. Respondent also deems the following facts found by the Court to be material:

Each of the Appellants is the owner of a home and lot (Lots 36 through 46) in the Meadow Cove No. 2 Subdivision, Salt

Lake County, Utah. (R. 66) The official plat of the Meadow Cove No. 2 Subdivision, No. 2544093, was recorded and filed at the request of Security Title Company on June 1, 1973, at 3:53 p.m., Book 73-6 at Page 15 of the official records of the Salt Lake County Recorder's Office. (Id.) Each of the Appellants executed the final closing documents in connection with their respective lots after June 1, 1973, the recording date of the Meadow Cove No. 2 Subdivision Plat. (Id.)

Sometime prior to April 3, 1973, Bush & Gudgell Engineers ("Bush & Gudgell") was employed by Porter Brothers Realty & Construction, Inc., a Utah corporation ("Porter Brothers"), the developer of the Meadow Cove No. 2 Subdivision, to make a survey of the proposed Meadow Cove No. 2 Subdivision. (Id.) On April 3, 1973, as a result of said survey, Robert B. Jones, a licensed land surveyor with Bush & Gudgell, certified that the true and correct location of the easternmost boundary of the Meadow Cove No. 2 Subdivision is as follows, to-wit:

Beginning at the North Quarter Corner of Section 21, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89°51'21" East 1318.385 feet to the East line of the Northwest quarter of the Northeast Quarter of said Section 21; thence South 0°36'40" East along said East line 989.19 feet. (Id.)

None of the deeds conveying to Porter Brothers the parcels of land comprising the Meadow Cove No. 2 Subdivision contain legal descriptions which extend the easternmost boundary line beyond the east line of the Northwest Quarter of the Northeast Corner of Section 21, Township 3 South, Range 1 East, Salt Lake Base and Meridian ("the east survey line"). (Id.)

In connection with the survey of the Meadow Cove No. 2 Subdivision, Bush & Gudgell, through its employees and agents, caused survey stakes and hubs to be placed at the lot corners along the easternmost boundary lines of Lots 36 through 46 so that prospective purchasers of those lots could determine the easternmost boundaries thereof; and no such survey stakes were placed by Bush & Gudgell or its employees beyond the east survey line. (Id.) In connection with the initial phases of the survey of the Meadow Cove No. 2 Subdivision, Bush & Gudgell caused a preliminary plat to be drawn on which an old fence line ("the old fence line"), located roughly 60 to 70 feet beyond the east survey line, was shown. (Id.) After having observed the old fence line, Robert B. Jones contacted Porter Brothers and Security Title Company to determine if any deed conveying to Porter Brothers or its predecessors the parcels of land comprising the Meadow Cove No. 2 Subdivision contained descriptions extending the easternmost boundaries of said parcels beyond the east survey line to the old fence line. (R. 67) Because Security Title Company could not produce any deed extending the easternmost boundary of any parcel comprising the Meadow Cove No. 2 Subdivision beyond the east survey line, Robert B. Jones informed the principals of Porter Brothers that the true and correct easternmost boundary line of the parcels conveyed to Porter Brothers was the east survey line, not the old fence line. (Id.)

Porter Brothers purchased parcels of land comprising Meadow Cove No. 2 Subdivision from South Mountain Corporation on

the basis of a price per surveyed acre as determined by a Bush & Gudgell survey, which survey did not include any land beyond the east survey line and which further calculated the acreage to be purchased by Porter Brothers at 24.740 acres. (Id.) On May 8, 1978, Reynolds Q. Johnson and Mildred Argyle Johnson executed a quit-claim deed purporting to convey the disputed property to the Appellants. (Id.) On May 12, 1978, R. Gordon Porter, President, and J. Stanton Porter, Secretary, of Porter Brothers, executed a quit-claim deed purporting to convey the disputed property to Appellants. (Id.) With respect to the quit-claim deeds from both Mr. and Mrs. Johnson and Porter Brothers, Appellants neither paid money nor gave anything of value to the grantors. (Id.) Sometime after April 3, 1973, Porter Brothers caused a fence to be constructed along the east survey line ("the white fence"), which fence coincides with the Bush & Gudgell certification of the easternmost boundary of the Meadow Cove No. 2 Subdivision. (Id.)

At the conclusion of the trial of this matter, the Honorable David K. Winder held that from and after June 1, 1973, at 3:53 p.m., Appellants were charged with actual or constructive notice of the boundary descriptions contained in the official plat of the Meadow Cove No. 2 Subdivision, including the specific boundaries and distances shown thereon with respect to Lots 36 through 46; that none of the Appellants could reasonably have relied upon the old fence line as being the true easternmost boundary line of their respective lots in the Meadow Cove No. 2

Subdivision; and that greater injustice and inequity would result from finding that the old fence line is the true boundary line than would result from establishing the boundary in accordance with the true survey line. (R. 68) Title to the disputed property was quieted in the Respondents. (Id.)

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY QUIETED TITLE IN THE DISPUTED PROPERTY IN PETERSON DEVELOPMENT COMPANY

A rather extensive analysis of the equitable doctrine of boundary by acquiescence appeared in a recent Utah Law Review article, 1975 Utah Law Review 221, 224 et seq. The purposes for and policies behind the doctrine of boundary by acquiescence are set forth by this Court in Olsen v. Park Daughters Investment Company, 29 Utah 2d 421, 511 P.2d 145 (1973):

"The doctrine of boundary by acquiescence is based on the policy that peace and good order of society require that there be stability . . . in the ownership and the occupation of lands. . . . (B)oundary lines which have been long established and accepted by those who should be concerned should be left undisturbed in order to leave at rest matters which may have resulted in controversy and litigation. . . .

. . . .

It is our opinion that the policy of encouraging peace and good order and of discouraging trouble and controversy demand that (boundary by acquiescence) be accepted as the correct doctrine, and that it need not depend upon rationalization as ideas of estoppel, presumed agreements, lost grants or other fictional concepts." Id. at 147 (Emphasis added)

This Court elaborated upon the doctrine of boundary by acquiescence in two recent decisions: Florence v. Hiline Equipment Company, 582 P.2d 998 (1978), and Hobson v. Panguitch Lake Corporation, 530 P.2d 792 (1975). In the Florence case, supra, one of the Defendants, James Saracino, sought title to a disputed strip of land beyond the boundary of his subdivision lot out to an old fence line. The trial court determined that the doctrine of boundary by acquiescence did not apply to the facts of that case. Florence, supra, at 1000. Affirming the trial court, this Court stated:

"A fence may be maintained between adjoining proprietors for the sake of convenience without the intention of fixing boundaries. Thus agreement to or acquiescence in the establishment of a fence, not as a line marking the boundary, but as a line for other purposes are acquiescence in the mere existence of the fence as a mere barrier, does not preclude parties in claiming up to the true boundary line.

A further reason for the court ruling as it did is that there is no allegation that any of these specific parties relied upon the fence as being the true boundary. Both Saracino and plaintiffs knew where the true boundary was located and treated it as such. Defendant Groll purchased from Saracino a subdivision lot bordering the disputed boundary line. He testified that the property conveyed to him by deed went only to the legal description, and that he has not been deprived of any footage for which he bargained. This gave rise to the trial court's conclusion "[t]hat none of the parties' interests will be interrupted or cause any inequities by holding that each party is to be the owner of their legally described tracts." This is consistent with our analysis of the facts in Hobson v. Panguitch Lake Corporation. In weighing the equities in that case we stated as follows:

We cannot see the circumstances as justifying a conclusion that the parties

acquiesced in regarding this fence as a boundary for the sufficiently long period of time, nor that any greater injustice will result from rectifying the error and establishing the boundary in accordance with the true survey line as described in the Deeds, than would result from depriving the defendants of the property conveyed to them.

Likewise, on the facts now before us, we must conclude as did the trial court that the parties have not by their actions relied upon the fence as being the true and actual boundary. Equity will not allow us to do other than to enforce those subtle intentions." Id. (Emphasis added)

The Findings, Conclusions, and Judgment of the trial court in the instant case bring it squarely within the holdings of Florence and Hobson, supra. Appellants in their brief have attempted to characterize the doctrine of boundary of acquiescence a "legal" rather than "equitable" doctrine. What the trial court must do in any boundary by acquiescence case is, as this court stated in Florence, supra, "weigh the equities". 582 P.2d at 1000. The equities must be substantially in favor of the party claiming boundary by acquiescence because, as this court stated in Hobson, supra, ". . . it must be appreciated that the recognition of such boundaries does have the effect of transferring ownership of disputed strips of property without compliance with the statute of frauds; and it may be at variance with recorded conveyances." 530 P.2d at 794.

There are a number of facts found by the trial court which cause the equities in the instant case to weigh heavily in favor of Respondent and justify the trial court's quieting title to the disputed property in Respondent. First, Appellants

neither paid money nor gave anything of value to the grantors for the quit-claim deeds which they received from Reynolds Q. Johnson, Mildred Argyle Johnson, and Porter Brothers. (R. 67) Second, and more significantly, as the trial judge pointed out near the conclusion of the trial of this case,

"Mr. Walker, I realize your clients are lay people dealing with a real estate agency, but they are charged with notice of what is recorded, aren't they? Every one of these people, at the time that they closed, there was of record in the County Recorder's Office a subdivision plat which set out the boundary to the white fence. And all of them, if they knew what they are charged with notice of, could have gone to Porter Brothers before they paid their money or allowed the thing to close and the construction loan to close and say, "We didn't get what we wanted." About half of them, as I recall the testimony, knew before-- even without being charged with notice of the subdivision plat, they saw this fence going up and they knew there was a dispute. It seems to me that they should have, at that point, before they allowed their loans to close, gone down and found out what they were buying and get out of it if they had to. I know that is easy to say, to get out of it when you have moved into a house and that sort of thing. But at least, they could get a rebate or settle the thing at that time.

But if this is recorded on May 30th, 1973, as it was--and the evidence is undisputed on that-- aren't they charged with knowledge of that at that time?" (R. 427, 428)

On the basis of the foregoing, Respondent respectfully submits that the trial court, ". . . having heard the testimony of witnesses; having received a number of exhibits; having heard the argument of counsel; having thereafter taken the matter under advisement; having reviewed the exhibits and the court's own notes relating to the testimony given at the trial; and having read the authority cited by counsel during the trial;. . ."


correctly concluded that from and after June 1, 1973, at 3:53 p.m., Appellants were charged with actual or constructive notice of the boundary descriptions contained in the official plat of the Meadow Cove No. 2 Subdivision, including the specific boundaries and distances shown thereon with respect to Lots 36 through 46; that none of the Appellants could reasonably have relied upon the old fence line as being the true easternmost boundary line of their respective lots in the Meadow Cove No. 2 Subdivision; that greater injustice and inequity would result from finding that the old fence line is the true boundary line than would result from establishing the boundary in accordance with the true survey line; and that title to the disputed property should be quieted in the Respondent Peterson Development Company. (R. 66-68)

CONCLUSION

Respondent respectfully submits that the Honorable David K. Winder, sitting as trier of both fact and law in the instant case, carefully weighed the equities before concluding that title to the disputed property should be quieted in the Respondent Peterson Development Company. It is further submitted that Appellants have failed in the instant appeal to demonstrate that the Findings, Conclusions, and Judgment of the trial court were clearly erroneous. Consequently, the judgment of the trial court should be affirmed.

DATED this 5TH day of May, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing
Brief of Respondent were served upon the Appellant by mailing
the same, postage prepaid, to M. RICHARD WALKER, WALKER & HINTZE,
Attorney for Appellants, 202 Heritage Plaza, 4685 Highland Drive,
Salt Lake City, Utah 84117, this 5TH day of May, 1980.


STEVEN H. STEWART