1988

Mel Trimble Real Estate v. Monte Vista Ranch : Brief in Opposition to Certiorari

Utah Supreme Court

M. Dayle Jeffs; Jeffs and Jeffs; Attorney for Respondents.
Robert J. Debry; Attorneys for Appellant.

IN THE UTAH SUPREME COURT

MEL TRIMBLE REAL ESTATE,	)	
Plaintiff/Appellant,	)	Supreme Court No. 880323
vs.	)	
MONTE VISTA RANCH, INC., and WALLACE OHRAN, RAY E. NELSON, HOWARD D. SHERWOOD, JOYCE T. RICE, and NELDON WILLIAMS,	)	Court of Appeals No. 860135-CA
	)	Category No. 13
Defendants/Respondents.	)	

BRIEF OF DEFENDANT MONTE VISTA RANCH, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

M. Dayle Jeffs
JEFFS & JEFFS
90 North 100 East
P.O. Box 888
Provo, UT 84603
Attorneys for
Defendant Monte Vista
Ranch, Inc.

Robert J. DeBry
ROBERT J. DEBRY & ASSOCIATES
4001 South 700 East, #500
Salt Lake City, UT 84107
Attorneys for Plaintiff/Appellant
Mel Trimble Real Estate

IN THE UTAH SUPREME COURT

MEL TRIMBLE REAL ESTATE,	)	
Plaintiff/Appellant,	)	Supreme Court No. 880323
vs.	)	
MONTE VISTA RANCH, INC., and WALLACE OHRAN, RAY E. NELSON, HOWARD D. SHERWOOD, JOYCE T. RICE, and NELDON WILLIAMS,	)	Court of Appeals No. 860135-CA
	)	Category No. 13
Defendants/Respondents.	)	

BRIEF OF DEFENDANT MONTE VISTA RANCH, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

M. Dayle Jeffs
JEFFS & JEFFS
90 North 100 East
P.O. Box 888
Provo, UT 84603
Attorneys for
Defendant Monte Vista
Ranch, Inc.

Robert J. DeBry
ROBERT J. DEBRY & ASSOCIATES
4001 South 700 East, #500
Salt Lake City, UT 84107
Attorneys for Plaintiff/Appellant
Mel Trimble Real Estate

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTION FOR REVIEW

Does the petitioner set forth any basis whereby certiorari could be considered?

The underlying decision of the Utah Supreme Court is not ambiguous or confusing. This Court should not reconsider its earlier decision in the underlying action. The Court of Appeals correctly applied the doctrine of collateral estoppel in its ruling.

REFERENCE TO COURT OF APPEALS DECISION

The Court of Appeals decision in this matter is reported at 758 P.2d 451, 86 UAR 29.

JURISDICTIONAL STATEMENT

The decision of the Court of Appeals was entered on July 8, 1988. A Petition for Rehearing was filed on July 21, 1988. That petition was denied by the Court of Appeals on August 3, 1988.

Jurisdiction of this Court is conferred by Utah Code Annotated, §78-2-2(5) (amended 1986), and Rule 42, Rules of the Utah Supreme Court.

CONTROLLING PROVISIONS

Not applicable

STATEMENT OF THE CASE

Trimble, as real estate broker, brought a suit against Fitzgerald under the terms of an Earnest Money Agreement and Offer to Purchase whereby Fitzgerald was to buy property belonging to Monte Vista Ranch, Inc. The Earnest Money Agreement provided that the buyer would be responsible for any real estate commissions. The case was tried to a jury and then appealed to the Utah Supreme Court, which affirmed the trial court's decision. Mel Trimble Real Estate v. Fitzgerald, 626 P.2d 453 (Utah 1981).

Trimble then sued Monte Vista Ranch, Inc., for the commission claimed to be owing from the same transaction. The claim in the second lawsuit was for an alleged oral listing agreement wherein Monte Vista Ranch, Inc., allegedly agreed to pay Trimble a commission on the sale of its property. On a Motion for Summary Judgment, the trial court entered judgment dismissing the claim against Monte Vista Ranch, Inc., on the grounds of collteral estoppel. The Court of Appeals affirmed. Trimble v. Monte Vista Ranch, Inc., 758 P.2d 451, 86 UAR 29.

ARGUMENT

POINT I

Petitioner Does Not Have a Basis for Consideration of Certiorari.

While it is recognized that Rule 43 of the Rules of the Utah Supreme Court is not exclusive, and that the Court may entertain any petition for certiorari, the Court has indicated that a petition will only be granted where there are special and important reasons for granting a writ of certiorari.

The petitioner in this matter has not set forth any claim under Rule 43(1) that there is any conflict between the panels of the Court of Appeals, or under Rule 43(2) that the Court of Appeals has decided any question of state or federal law in conflict with any decision of this Court. He has not asserted under Rule 43(3) that the Court of Appeals has rendered a decision departing from the accepted and usual course of judicial proceedings. He has not alleged under Rule 43(4) that the Court of Appeals has decided an important question of municipal, state or federal law which has not been settled by this Court.

The petitioner asks this Court to reconsider its own former decision and to second guess the interpretation of that decision by the Court of Appeals in rendering the decision from which the Petitioner for Writ of Certiorari has been

filed. There are no questions of special or important matters for the consideration of this petition.

POINT II

The Trial Court and the Court of Appeals Were Not Misled by Any Confusing Language in the Utah Supreme Court's Prior Opinion.

The first case of this matter was Mel Trimble Real Estate v. Fitzgerald, 626 P.2d 453 (Utah 1981). That case was an action by Mel Trimble Real Estate against the buyer, Fitzgerald, for a claimed real estate commission on the sale of the Monte Vista Ranch.

The second case, Mel Trimble Real Estate v. Monte Vista Ranch, Inc., et al., 758 P.2d 451 (Utah App. 1988), was an action by Mel Trimble Real Estate against the seller, Monte Vista Ranch, Inc., for the same commission that was denied in the first action.

Petitioner alleges that the parties and the issues are different, and that thus there can be no collateral estoppel. The distinction between res judicata and collateral estoppel is that while the parties in collateral estoppel need not be identical, the issues must be the same. As the Court of Appeals pointed out on July 8, 1988, collateral estoppel is basically issue preclusion.

In the case against Fitzgerald, one of the principal issues was framed in Jury Instruction No. 8, beginning:

> The Court has ruled as a matter of law that the agreement of December 7, 1977, imposed upon defendant [Fitzgerald] the liability for the real estate commission, if any, owed plaintiffs upon this transaction. (emphasis added)

This Court approved that instruction and the ruling by the trial judge that any commission which might be owed was owed by defendant/buyer, Leland Fitzgerald. The jury found that no commission was owed.

The trial court in the second action, against Monte Vista Ranch, Inc., ruled that the issue in that trial was essentially the same as the issue in the first trial, i.e., whether a real estate commission was due from the sale of Monte Vista Ranch, and if so, who should pay the commission. The Court of Appeals found that to be the case when they said:

> It is surely appropriate to conclude the trial court would not have ruled that if any commission were owed it was owed by Fitzgerald, unless that question had been presented and litigated.

(Trimble v. Monte Vista Ranch, Inc., supra, at page 454).

Instruction No. 8 given in the first trial specifically held, as cited above, that the court had ruled as a matter of law that the agreement imposed a duty upon defendant Fitzgerald for the liability, if any, for the real estate commission. Thus, the conclusion of the appellate court in this matter is in perfect harmony with the decision of the Utah Supreme Court in the first appeal.

The first paragraph and the last paragraph of Point I of petitioner's brief suggest that because the parties in the first case were Trimble against Fitzgerald, and in the second case were Trimble against Monte Vista Ranch, Inc., there can be no collateral estoppel. Obviously, the appellant does not understand the distinctions between the two branches of res judicata, and particularly the branch applicable in collateral estoppel or issue preclusion. The conclusions drawn by the trial court in granting summary judgment, and the conclusion drawn by the Court of Appeals, are in complete harmony with the earlier decision of this Court.

POINT III

Certiorari Should Not Be Granted So That This Court Can Reconsider Its Prior Decision.

Petitioner claims that the first decision was drafted "by a very elderly retired judge" and that the decision was "obscure". This writer's experience with Judge Maurice Harding is that he was at all times alert, very bright, and very perceptive of issues in cases.

The suggestion that the Supreme Court should now reconsider its allegedly ambiguous decision ignores the entire principle of res judicata and putting matters to rest. The decision was handed down on February 13, 1981; if petitioner believed the ruling to be ambiguous, a petition for rehearing should have been filed under former Rule 76 of the Utah Rules

of Civil Procedure. To suggest that the Court should now reconsider its 1981 decision is nothing short of ludicrous.

This writer does not believe that the 1981 opinion, in which Justices Hall, Stewart, Crockett and Henriod all concurred, is ambiguous or necessitates any clarification. The matter should be brought to rest.

POINT IV

The Court of Appeals Did Not Fail to Review Its Own Record Before Ruling on the Issue of Collateral Estoppel.

Although petitioner claims Monte Vista Ranch, Inc., was not a party to the earlier action, petitioner conceeds in footnote 4 of his petition (page 5) that Monte Vista Ranch, Inc., was a party in the first proceeding in a crossclaim brought by Fitzgerald against Monte Vista Ranch, Inc.

A careful reading of Judge Orme's decision shows that he did consider all of the information in the record submitted to him by the appellant. He considered both res judicata and collateral estoppel and described the elements necessary (page 454), and that he specifically discussed whether all of those conditions of collateral estoppel were met. He discussed in detail the Supreme Court decision, and in footnote 1 (page 454), he says:

> Trimble's decision not to join Monte Vista or its shareholders in the action commenced against Fitzgerald tends to suggest Trimble knew that, aside from whatever commissions

other parties might owe, no commission was owed by Monte Vista or its shareholders.

One cannot doubt that the Court of Appeals well understood that in the trial of the first matter, although Monte Vista Ranch, Inc., was not a party, the doctrine of collateral estoppel applied because the issue of commission was litigated and decided adverse to the plaintiff.

The Court further discussed at some length the issue of judicial notice as to matters outside the record, and concluded that it would not take judicial notice of matters not presented to the trial court. The opinion well demonstrates the full consideration of this second appeal by the plaintiff, and the application and implementation of collateral estoppel as a bar to the plaintiff's claim.

The suggestion that the Court of Appeals failed to review its own record is not borne out by the detailed opinion rendered in the matter.

CONCLUSION

This Court should deny the petition for certiorari.

Respectfully submitted this 3rd day of October, 1988.

M. Dayle Jeffs

CERTIFICATE OF MAILING

I hereby certify that the ten copies of the foregoing was delivered to the Clerk of the Court, Utah Supreme Court, and a four copies were mailed to the below named party by placing same in the United States mails, postage prepaid, this 3rd day of October, 1988, addressed as follows:

Robert J. DeBry
Robert J. DeBry & Associates
4001 South 700 East, #500
Salt Lake City, UT 84107

M. Dayle Jeffs