

1981

Melvin Church v. Meadow Springs Ranch Corporation, Inc. , Estate of Thomas Tony Castagno, Albert J. And Bernice B. Castagno, Myron T. Castagno And Mrs. Myron T. Castagno, Eugene Castagno And Mrs. Eugene Castagno Individually, And Eugene Castagno, As Administrator of The Estate of Thomas Tony Castagno, Richard Castagno, John Does And Jane Does, One Through Six, As Heirs of Thomas Tony

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Brief of Respondents Meadow Springs Ranch Corporation, Inc. And All Castagnos Except Albert

J. And Bernice B. Castagno  
Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act,

administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Paul N. Cotro-Manes; Attorney for Meadow Springs

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Utah Supreme Court

and Bernice B. Castagno E.J. Skeen; Attorney for Federal Land Bank of Sacramento

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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MELVIN CHURCH,

Plaintiff and Appellant,

vs.

MEADOW SPRINGS RANCH CORPORATION,  
INC., ESTATE OF THOMAS TONY  
CASTAGNO, ALBERT J. and BERNICE B.  
CASTAGNO, MYRON T. CASTAGNO, EUGENE:  
CASTAGNO, individually, and EUGENE  
CASTAGNO as Administrator of the  
Estate of THOMAS TONY CASTAGNO,  
RICHARD CASTAGNO, JOHN DOES and  
JANE DOES, One through Six, as  
Heirs of THOMAS TONY CASTAGNO,

Case No. 17241

Defendants and Respondents.

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BRIEF OF RESPONDENTS MEADOW SPRINGS RANCH  
CORPORATION, INC., AND ALL CASTAGNOS EXCEPT  
ALBERT J. and BERNICE B. CASTAGNO

---

Appeal from a Judgment of the Third District Court  
In and for Tooele County, State of Utah  
Honorable Homer F. Wilkinson, Judge

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Albert J. & Bernice B.  
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CASTAGNO, MYRON T. CASTAGNO,  
EUGENE CASTAGNO, individually, and  
EUGENE CASTAGNO as Administrator  
of the Estate of THOMAS TONY  
CASTAGNO, RICHARD CASTAGNO, JOHN  
DOES and JANE DOES, One through  
Six, as Heirs of THOMAS TONY  
CASTAGNO,

Defendants and Respondents.

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BRIEF OF RESPONDENTS

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STATEMENT OF THE NATURE OF THE CASE

Appellant filed a complaint seeking, in his first cause of action, to quiet title to an approved application to appropriate water and for damages against respondent Meadow Springs Ranch, Inc., for allegedly preventing appellant from perfecting his claim to the appropriation.

In a second cause of action, appellant sought damages from respondents Albert J. Castagno and Bernice B. Castagno for alleged breach of an oral agreement to assist in perfecting appellant's claim to the subject appropriation and for alleged breach of an oral agreement to sell a 3/5 interest in said appropriation to appellant.

## DISPOSITION IN LOWER COURT

After a trial before the Honorable Homer F. Wilkinson on April 1 and 2, 1980, the Court rendered judgment in favor of all respondents as to both causes of action.

## RELIEF SOUGHT ON APPEAL

Respondents seek an affirmance of the judgments entered in their favor by the District Court.

## STATEMENT OF FACTS

Appellant's first cause of action sought to quiet title in his favor to a 3/5 interest in an approved application to appropriate water, No. 32822, on record with the State Engineer of the State of Utah. (Ex. P-1)

The application was originally filed by Bernard Castagno on March 13, 1961, for 5 second-feet of water to be used for irrigation, stock-watering and domestic purposes. The application was later approved and, by virtue of Change Application No. A-3927 (Ex. D-14), was deemed a supplemental appropriation in addition to 5 second-feet approved under Application No. 30900 (Ex. P-4). Both appropriations were to be diverted from the same wells and applied on a 460 acre parcel of land owned by Bernard Castagno and his wife Gertrude Mae Castagno.

After Bernard Castagno's death, Gertrude Castagno conveyed the real property, as to which application No. 32822 was appurtenant, to Gledhill, Inc., by a Warranty Deed dated March 16, 1971, and duly recorded thereafter. (Ex. P-10). The deed included a conveyance of all water rights appurtenant to the land.

Gledhill reconveyed the property to Terracor by a Warranty Deed recorded on March 23, 1971. (Ex. P-8). That deed also transferred all water rights used in connection with the property.

Thereafter, pursuant to an exchange agreement (Ex. P-7) Terracor conveyed the subject property to Thomas Tony Castagno by a Warranty Deed dated and recorded on March 23, 1971. (Ex. P-6). That deed also conveyed all appurtenant water rights.

After the death of Thomas Tony Castagno the subject property was distributed to his children under a Decree of Distribution of the Third Judicial District Court of Tooele County, dated November 27, 1972. (Ex. P-11).

The children of Thomas Tony Castagno later formed a family corporation, Meadow Springs Ranch Corporation, Inc., and conveyed the subject property to the corporation by Warranty Deed dated July 7, 1973, which included a transfer of all water rights appurtenant thereto.

Prior to conveying the land to Meadow Springs Ranch, the Castagno children mortgaged the property to the Federal Land Bank of Berkeley, including therein the water rights appurtenant to the property under the subject applications. The Bank notified the State Engineer of its claim and the same was acknowledged by a letter from the State Engineer dated June 5, 1973. (See Ex. P-1)

The evidence at trial indicated that two wells were drilled and the water appropriated under applications 32822 and 30500 was beneficially used on the Meadow Springs Ranch

In support of that contention, appellant cites the case of McGarry v. Thompson, 114 Utah 442, 201 P.2d 288 (1948), correctly noting that the mere filing of an application does not vest a person with the right to use water unless it is approved by the State Engineer or district court on an appeal. Appellant's analysis, however, ceases at that point and ignores the remainder of the opinion in McGarry, supra, which is critical to and dispositive of the instant appeal in favor of respondents.

In the first instance, Section 73-3-18, Utah Code Annotated (1953), provides specifically for the transfer or assignment of water rights claimed under an unapproved application to appropriate water so long as the conveyance thereof is in writing and acknowledged in the manner provided for acknowledging conveyances of real property.

That statutory provision was obviously designed to provide for the orderly transfer of water rights where, as in the initial conveyance by Gertrude Castagno, the water rights under an application have not yet matured into a vested right by way of issuance of a certificate of appropriation.

The Utah Supreme Court in McGarry, supra, concluded that the statute intended there to be no distinction as to the transferability of an approved or unapproved water right, stating:

This provision expressly authorizes the transfer or assignment of rights claimed under an application for the appropriation of water, prior to the issuance of a certificate of appropriation. It

makes no distinction between an approved application and one which has not yet been approved. For us to read into that statute such a distinction would be to place a meaning in the statute which there is no evidence that the legislature intended.  
201 P.2d at 291

The final, and most critical, proposition set forth in the McGarry case deals with the question of priority of water rights. Under Section 73-3-18, and its predecessor statute considered in McGarry, the priority of a water right, once approved, is determined as of the date the application is filed, not the date a certificate of appropriation is issued. The Utah Supreme Court stated:

No vested right to the use of water is acquired by the mere filing of an application to appropriate water. And no such right can be acquired as a result of such filing unless such application be approved either by the State Engineer, or by the court on an appeal therefrom. But the filing of such an application is the initiating step in acquiring such a right without which no such right can be acquired and the priority of any water right later acquired through such initiating step is determined from the date of filing the application and not from the date of appropriation. This is a valuable inchoate right which may mature into a vested right to the use of water. . . . In the face of this express statute and in the absence of any constitutional prohibition, we conclude that an application to appropriate

unappropriated waters is assignable even though it has not been approved by the State Engineer. 201 P.2d at 292.

In applying the rationale of the McGarry case to the present appeal, it is apparent that Gertrude Castagno conveyed away all of her water rights under application No. 32822, whether approved or unapproved at the time of the original transfer being immaterial, and the ultimate right which resided in the Castagno heirs and Meadow Springs Ranch Corporation was an appropriated water right with priority as of the original filing date of application No. 32822 in March of 1961.

The facts are undisputed that the water in question was appurtenant to the land originally owned by Bernard and Gertrude Castagno. The application No. 32822 made reference to the land, the points of diversion were on the land and the water was intended to be and, in fact, beneficially applied for irrigation purposes on the land.

An unbroken chain of authority, as well as Section 73-3-11, Utah Code Annotated (1953), firmly establishes the proposition that a conveyance of real property includes water appurtenant to that property unless the grantor "expressly" reserves the right to the use of the water. As stated in the case of Cortella v. Salt Lake City, 93 Utah 236, 72 P.2d 630 (1937), "(t)his has been the statutory rule at least as far back as 1888." 72 P.3d at 635.

That rule derives from the definition of a water right as an incorporeal hereditament and thus real property. Cortella

v. Salt Lake City, supra; In re Bear River Drainage Area, 2 Utah 2d 208, 271 P.2d 846 (1954).

The only way in which Gertrude Castagno could have preserved an interest in the water appropriated under application No. 32822 would be by virtue of an express reservation in the Warranty Deed conveying the subject property. The case law has stringently applied and strictly construed the requirement that the reservation be "express" Stephens v. Burton, 546 P.2d 240 (1976); concurring opinion of Justice Hall in Roberts v. Roberts, 584 P.2d 378 (1978).

Not only did Gertrude Castagno, and all subsequent transferors, not expressly reserve a right but rather, she expressly conveyed in plain language all water and water rights appurtenant to or used in connection with the land in question.

Appellant further seeks to support his claim to a 3/5 interest in application No. 32822 by urging a restrictive interpretation of Section 73-3-18, Utah Code Annotated (1953), so as to require that the only valid method of transferring the rights under application No. 32822 is by way of an assignment which, if duly acknowledged and filed with the State Engineer, gives the assignee a priority over an unrecorded assignment.

Appellant's position ignores the clear import of the McGarry opinion which construed that statutory provision so as to promote the free transferability of unapproved rights which may later mature into vested water rights. The section was not intended to otherwise limit the transfer of water rights by deed or other conveyance.

Even assuming for the sake of an argument that the original conveyance by Gertrude Castagno of her water rights was ineffective to pass title to the approved application, appellant must still fail in his attempt to assert a valid 3/5 interest by assignment. Under the McGarry rationale, the assignee must be a bona fide purchaser for value without notice of any previous assignment. In the first instance, neither the assignment from Gertrude to Albert Castagno was for value nor the subsequent assignment to appellant, inasmuch as he had already contracted to sell the land and provide the water described therein to Albert and Bernice Castagno. The assignments were purportedly intended only to complete delivery of the promised one second-foot of water.

As to the remaining requirement, appellant obviously had notice of the previous transfer of water rights under application No. 32822. All of the pertinent conveyances were recorded with the Tooele County Recorder, imparting constructive notice of the water transfers. Further, appellant had actual notice by virtue of his researching file 32822 at the State Engineer's Office which contained several references to the chain of title leading to Meadow Springs Ranch.

In the language of Wood v. Carpenter, 101 U.S. 135 at 141, cited in McGarry, supra, 201 P.2d at 293:

'Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.'

In this case, appellant had ample notice so as to put him on guard and to require him to ascertain the true title to the water in dispute.

Appellant's position is simply logically absurd. To find that the original conveyance was void and that Gertrude Castagno retained an interest for many years to application No. 32822, despite the fact that the application was perfected and the water beneficially applied by subsequent transferees, amounts to a torturing of the facts.

The truth is that Gertrude Castagno conveyed all of her rights under No. 32822 with no express reservation thereof and the Castagno heirs and Meadow Springs Ranch received clear title thereto. The purported assignment of a 3/5 interest to appellant was merely a sham transaction.

The findings and judgment quieting title in favor of Meadow Springs Ranch are amply supported by the evidence and should be affirmed.

#### POINT II

#### THE TRIAL COURT'S JUDGMENT ON APPELLANT'S SECOND CAUSE OF ACTION SHOULD BE AFFIRMED

The trial court ruled that all issues arising from the Uniform Real Estate Contract executed between appellant and Albert and Bernice Castagno were decided in Castagno v. Church, 552 P.2d 1282 (1976) and the same were res judicata as to the instant case.

The court further found that the separate oral agreement between appellant and Albert and Bernice Castagno conferred

upon appellant only a contingency interest in the 3/5 portion of application No. 32822 in issue herein and that appellant's 3/5 interest was conditioned upon his successfully acquiring title to the full five second-feet appropriated under No. 32822.

The only consideration for the 3/5 interest was to be the efforts of appellant in seeking to acquire title to the water and was not related to any claimed abatement of the purchase price under the land sale contract.

Appellant's claim for damages for the alleged failure of Albert and Bernice Castagno to provide him with three second-feet of water is without merit. The quieting of title in favor of Meadow Springs Ranch automatically voided any claim to the subject water for impossibility inasmuch as there was no water to be assigned to the Castagnos or appellant.

In addition, the entire scheme to assign the rights to application No. 32822 was concocted and promoted by appellant and, as the trial court correctly concluded, failed only due to appellant's inability to perfect his claimed assignment of the application.

Appellant is not entitled to damages as against Albert and Bernice Castagno in view of his failure to perfect title nor against Meadow Springs Ranch Corporation for successfully asserting its title to the subject appropriation.

The trial court's judgment on appellant's second cause of action should be affirmed as to all respondents.

CONCLUSION

Based on the foregoing, respondents request the Court to affirm the judgment of the trial court in its entirety.

DATED this 7<sup>th</sup> day of May, 1981.

Respectfully submitted,

PAUL N. COTRO-MANES  
Attorney for Meadow Springs Ranch

JOHN A. ROKICH  
Attorney for all Defendants except  
Meadow Springs & Albert J. and  
Bernice B. Castagno

MAILING CERTIFICATE

I hereby certify that I mailed two copies of Respondents' Brief to Kenneth M. Hisatake, Attorney for Plaintiff-Appellant, 1825 South Seventh East, Salt Lake City, Utah 84105; and to Douglas F. White, Attorney for Respondents Albert J. and Bernice B. Castagno, Prudential Plaza, 185 North Main, Suite B-1, Tooele, Utah 84074, this 7th day of May, 1981.

  
Richard A. McQuinn