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Velma Marchant, Elma Winterton, Leora
Robinson, Wanda Penrod, Mona Lichty, Merle
Anderson v. Park City, a municipal corporation, and
the State of Utah : Brief of Plaintiffs- Appellant

Utah Supreme Court

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th Supreme Court

VELMA MARCHANT, ELMA
WINTERTON, LEORA ROBINSON,
WANDA PENROD, MONA LICHTY,
MERLE ANDERSON

Plaintiffs and Appellants,

vs.

PARK CITY, a municipal corpora-
tion, and THE STATE OF UTAH,

Defendants and Respondents.

CASE NO. 890139

Priority No. 13

BRIEF OF PLAINTIFFS-APPELLANTS

Appeal From A Judgment Of Utah Court of Appeals

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BRIEF OF PLAINTIFFS-APPELLANTS

I.

STATEMENT OF JURISDICTION AND NATURE OF CASE

Jurisdiction is conferred upon this Court pursuant to §§ 78-2-2(3)(a) and (5) U.C.A. (1953 as amended 1988) and Rules 42 and 48(d) R. Utah S. Ct. The case was originally transferred to the Court of Appeals pursuant to § 78-2a-3(2)(j) U.C.A. (1953 as amended 1988).

This is an appeal from a decision of the Utah Court of Appeals in a real property dispute which was originally tried in the District Court of Summit County.

II.

ISSUES PRESENTED FOR REVIEW

1. Was Plaintiffs' "tax title" protected from challenge by the Defendants after four years by the statute of limitations prescribed in § 78-12-5.1 (U.C.A), even if the tax deeds were ambiguous?

2. Plaintiffs and their predecessors adversely possessed the home and yard which is the subject of this action and paid all taxes assessed from 1910 to 1931. Title vested after seven years pursuant to 78-12-12.1 (U.C.A.) and cannot be attacked 70 years later.

3. Plaintiffs' "root of title" to this property is at least 70 years old and is coupled with their exclusive possession since 1910. Their ownership and title is protected from challenge by the Utah Marketable Title Act, § 57-9-1 et seq. (U.C.A., 1953).

4. If Plaintiffs did not have title to the yard on which their house was located for 70 years, did they maintain a prescriptive right to maintain their home and yard in that location?

5. Is Park City liable for the destruction of Plaintiffs' home for authorizing a third party to destroy it, and was the claim for damages timely filed?

III.

DETERMINATIVE STATUTES

The following statutes are determinative and are appended to this brief:

1. Section 2655, Compiled Laws of Utah (1907).
2. Section 2425, Compiled Laws of Utah (1907)

3. Section 80-5-12, Utah Code Annotated (1943)
4. Section 78-12-5.2, Utah Code Annotated (1953)
5. Section 57-9-1 et seq., Utah Code Annotated (1953)
6. Section 63-30-13, Utah Code Annotated (1953)
7. Section 78-12-5.1, Utah Code Annotated (1953)
8. Section 78-12-5.3, Utah Code Annotated (1953)
9. Section 78-12-7, Utah Code Annotated (1953)
10. Section 57-1-13, Utah Code Annotated (1953)

IV.

STATEMENT OF CASE

This is an action to quiet title to a home and yard in Park City and for the destruction of that home by Park City to build a new road. The Plaintiffs are all of the heirs of William and Charles Rolfe who were Plaintiffs' grandfather and father, respectively.

The Plaintiffs' family commenced residing in this home in approximately 1910. None of the Defendants in any way ever occupied or maintained possession of the property.

Trial was held on May 6 and 7, 1987. Judgment was entered determining that while both the Plaintiffs' and Defendants' chains of title were flawed, the State of Utah's title was superior. The trial court also dismissed Plaintiffs' claims to title by adverse possession and the Marketable Record Title Act.

Plaintiffs appealed to the Utah Supreme Court which transferred the case to the Court of Appeals. That Court ruled in its opinion dated March 13, 1989 that Plaintiffs did not hold title by adverse possession, the tax deeds and statute of limitations were

inapplicable and there was no prescriptive easement applicable to this action. The opinion did not address the application of the Marketable Record Title Act or Plaintiffs' claim of damages for the destruction of their home, other than to note those issues had been raised on appeal.

V.

STATEMENT OF FACTS

This is an action which was brought to secure title to the Plaintiffs' family home in Park City. The house and yard were located on what is now the "new" access road to Deer Valley in the depot area. The property is located next to the yard and home which was the subject matter of this Court's decision in *Park West Village, Inc. v. Avise*, 714 P.2d 1137 (Utah, 1986).

The Plaintiffs are all of the heirs of the family that commenced residing in this home in approximately 1910 (T. p. 40). At that time William Rolfe and his wife moved into the home and two generations of the Rolfe family were raised there. The family occupied the property continuously until about 1964 (T. p. 44); visited the property on a regular basis thereafter (T. p. 65); and, were repairing the home when it was demolished between August 4th and September 7, 1981 to build an access road for Deer Valley Resort (C.A. Opinion p. 2).

The home was a two-bedroom house with a front room, kitchen, cellar, and "L-shaped" porch (T. p. 28). The yard was fenced and terraced with a retaining wall on the back and a garden on top (T. p. 26, Ex. 2). The yard contained an apple tree and was always

enclosed by a fence (T. p. 43) and, in fact, the fence existed as of the date of trial (T. p.77).

1. Possession and Use of the Home and Property

It is important to emphasize that at no time prior to the commencement of this suit have any of the Defendants or their predecessors, in any manner whatsoever, ever used or been in possession of this property. The Plaintiffs and their family, however, maintained actual occupancy or use for at least the last 70 years.

William Rolfe resided in this home from at least 1910 until his death in 1939 (T. p.40). After that his widow continued to live at the home until 1946. She died in 1949 (T. p.40). After 1949 the Plaintiffs' father, Charles Rolfe, rented the house to "the Evans girls" until approximately 1964 (T. pp. 44-65). The Plaintiffs continued to visit and go to the property at least once a year from then on (T. p.65). Charles Rolfe died in 1966 and the Plaintiffs' mother, Ethel Rolfe, died in 1981 (T. p. 69).

In addition to the foregoing acts of possession and ownership, both the Plaintiffs and Park City recognized Plaintiffs' ownership of the property. In 1978 Park City sent Ethel Rolfe a letter requesting her to fix up and repair the house in question (T. p. 42, Ex. 16). There is no explanation given or testimony as to why Park City could, at the time of trial, claim they owned the house and had since 1969 yet ask Mrs. Rolfe, as owner, to repair it in 1978. There was another request by the Park City Building Inspector which had been sent to Mrs. Rolfe but which had been lost (T. p. 53). The Plaintiffs informed

Park City that they were going to repair the house (T. p. 59, Ex. 17), and that the residence was to be rehabilitated (T. pp. 53, 54).

In the late 1970s, one of the Plaintiffs and her family commenced the actual rehabilitation of the premises (T. pp. 53-55). This included repairing the roof; obtaining engineering and legal opinions relative to the property; electrical work; contacting the Park City Building Inspector; and putting a new door on the property (T. pp. 56-59). An actual log of some of this activity was maintained by Mrs. Anderson showing continual work on their property (T. Ex. 41).

No one, up to the time the house was demolished in 1981, ever challenged or refuted Plaintiffs' ownership or right of use of this property. None of the Defendants nor any of their predecessors ever made any claim of right to possess or use the Rolfe home prior to these proceedings.

2. Payment of Taxes on the Subject Property

As was the case in *Park West Village v. Avise*, 714 P.2d 1137 (Utah, 1986), there is some confusion about the assessment of real property taxes in Summit County in the early part of this century. There appeared to be a practice of assessing real property taxes to more than one party, or assessing the improvements to one party and the underlying real property to another, but treating all assessments or liens as delinquent, real property taxes.

However, there is no dispute that this dichotomy of real property assessment did not occur in this instance until the Plaintiffs had been in actual, physical possession of this property for over 31 years.

The Court of Appeals at page 3 of their Opinion found:

“There was no evidence that anyone other than William Rolfe paid taxes on the property until 1931. From 1931 to 1953 the real property was assessed as part of Silver King Coalition Mines. From 1954 to 1969 real property taxes were assessed to and paid by United Park City Mines.”

In addition to the foregoing findings, the following facts are germane to the payment of taxes.

After 1970 the real property was not assessed because it formed a portion of numerous parcels of property which had been given by United Park City Mines to Park City Corporation. The Avise property was also one of those parcels. The Rolfes themselves paid all taxes assessed to them (T. p. 46), and since the death of Mrs. Rolfe in 1981, Merle Anderson, one of the Plaintiffs, paid the taxes (T. pp. 46, 59-70). At no time did Summit County or any other party make any demand for additional taxes or state taxes were due on the property (T. p. 86). In 1957 the Plaintiffs' father made an inquiry to ascertain if there were any delinquent taxes due on the property and the Summit County Treasurer responded in a letter (T. pp. 47, 48, Ex. 13) as follows:

“Dear Mr. Rolfe:

I checked over the records on the tax situation of your father's place in Park City and found that in 1938 a Quit-Claim Deed was issued by the County to your father for \$33.00. The receipt and everything was made out to William Rolfe, Sr. so I have no way of knowing who paid that money. From 1940 until 1952 the taxes have been taken care of

by widow's abatement by the County Commission. In the year 1955 you paid the taxes of \$8.06, in 1956 you paid the taxes in the amount of \$7.33. I hope this is the information you want, but if I can help you in any way, please, let me know more.

Sincerely,

Reid Pace
Summit County Treasurer"

(Addendum 5)

3. Documents of Title

A. Plaintiffs' Chain of Title.

In addition to the claim of uninterrupted use and possession of the property coupled with the payment of taxes (at least from 1910 until 1931), Plaintiffs assert title through a chain of documents:

1. Tax Deed (which is delineated "quit-claim deed") from Summit County to William Rolph (sic) dated June 10, 1914 for \$28.60 for "improvements east U.C. track, Park City, Utah". The Deed states that it is made from title secured from a tax sale in the year 1909 and by an auditor's deed to Summit County dated May 1, 1914 and in accordance with Section 2655, Compiled Laws of Utah, 1907 (Addendum 1).

2. Tax Deed from Summit County to William Rolfe dated June 21, 1917 for \$1.00 for "that certain framed dwelling house by lumber house in Park City, Summit County, Utah", assessed to William Rolfe in the year 1912. That Deed was also issued under authority of Section 2655, Laws of Utah 1907 as amended by Chapter

114 and 115, Laws of Utah 1911 and pursuant to an Order of the Board of County Commissioners of Summit County (Addendum 2).

3. Letter from the Summit County Treasurer to Charles Rolfe dated May 16, 1957 stating that he had found a 1938 Quit-Claim Deed issued by Summit County to William Rolfe. The letter also stated that from 1940 to 1954, taxes were taken care of by widow's abatement and that Charles Rolfe had paid taxes in 1955 and 1956 (Addendum 3).

4. Tax Deed from Summit County to Charles Rolfe dated June 13, 1963 for the "following described real estate in Summit County Utah: house and lumberyard. "This conveyance is made in consideration of payment by the Grantee of the sum of \$12.53 delinquent taxes, penalties, interest and costs, constituting a charges against said real estate for the year 1958 in the sum of \$7.81 (Addendum 4).

B. Defendants' Chain of Title.

The Defendants claim title to the property through a series of documents, but at no time claim to have had the physical use or possession of the property. Three of their documents lack a legal description of the real property to which they apply (C.A. Opinion, p. 3). The documents are as follows:

1. Patent containing this property and others to George Snyder on April 5, 1882.

2. Deed from George Snyder to Park City Smelting Company dated November 14, 1883.

3. Deed from Park City Smelting Company to Lewis Withey and Clay Holister dated September 21, 1912. This Deed did not contain a “legal description” of the property but conveyed “all of the real property or rights or interest in real property belonging to the Park City Smelting Company and situated in the County of Summit Utah.”

4. Deed from the Estate of Lewis Withey to Silver King Coalition Mine Company dated November 5, 1926. This Deed did not contained a description of the property but conveyed “all the estate, right, title, interest, property, claim and demand whatsoever of the said Lewis Withey . . .”

5. A Trustee’s Deed from Clay Holister to Silver King Coalition Mine dated February 18, 1927. This Deed had no description of the property but described it as “all other real property or rights or interest in real property . . . belonging to Park City Smelting Company, and situated in the County of Summit, State of Utah.” [There is no explanation or evidence of a conveyance of any of the subject property into a trust or the terms of said trust.]

In addition to lacking a legal description of the subject property in documents 3 through 5, they are all conveyances in the form of a quit-claim deed as defined by Section 57-1-13 U.C.A. and there are no warranties or conveyances of after-acquired title.

6. Deed from Silver King Coalition Mines Company to United Park City Mines Company dated May 8, 1953.

7. Deed from United Park City Mines Company to Park City dated April 2, 1969.

8. Deed from Park City to the State of Utah dated June 7, 1982.

The foregoing summary of the conveyances under which the State of Utah holds title are found on page 3 of the Court of Appeals Opinion (Addendum 7).

4. Demolition of Plaintiffs' Home at 112 Pacific Avenue

In August, 1981, Park City issued a demolition permit in the name of Deer Valley Resort to remove six homes located on Pacific Avenue. The structure on that permit was designated at "900 Pacific" (Ex. 38, Addendum 6). The address of the Plaintiffs' home was 112 Pacific Avenue (T. pp. 100-101). The permit also had an attachment which stated "remove buildings per photo" (T. p. 93, Ex. 39). The attached photographs included six structures, including the Avise house next door (T. p. 95, Ex. 40) which was not demolished. Counsel for Plaintiffs assumes that this was not accomplished because Mr. Avise was home at the time.

No demolition permit was ever issued for the destruction of a home at 112 Pacific Avenue (T. p. 102), yet Park City directed that Lloyd Brothers Construction demolish the house pursuant to that permit (T. p. 95). The officer of Park City who actually issued the permit contended that Deer Valley Resort owned the property since 1981 (T. p. 103), despite the earlier letters from his office to the Plaintiffs and their response stating they were rehabilitating the property (Exs. 16 and 17).

The building was demolished between August 4, 1981 (Ex. 38 and Labor Day, September 7, 1981 (T. p. 73, C.A. Opinion, p. 2) After this action was filed, Park City altered its position and now contends that it has owned the real property since April 2, 1969 (T. p. 148).

This discrepancy was never addressed at trial nor was any justification as to the demolition of Plaintiffs' home.

Merle Anderson, besides being one of the owners of this home, has personal experience in remodeling and repairing "a number of homes" because she and her husband were in the property management business at the time of trial. She testified, without objection, that the replacement costs of the structure would exceed \$20,000.00 (T. p. 63). No appraisals could have been performed on the structure since it was surreptitiously destroyed (T. p. 64), and it wasn't until about a month later, on Labor Day, 1981, that Plaintiffs became aware of the destruction (T. p. 73). The lower court took judicial notice that Labor Day, 1981 was September 7, 1981.

5. Claim for Damages

A claim for damages for the destruction of the home was sent to Park City on August 30, 1982 (Ex. 18) within one year of the time the Plaintiffs discovered the destruction. A denial of that claim was sent to the Plaintiffs by the Park City Attorney September 20, 1982 (Ex. 19). The trial court confused these dates and found the claim was submitted on September 20, 1982 (R. p. 381, F.F. # 16) (Addendum 9).

6. Miscellaneous

The trial court in its Findings of Fact (R. p. 380, FF 3, 4) found that the Plaintiffs' grandfather had worked for Silver King Coalition Mines; were permitted to construct a house on the property and that such was common practice for "this company" (R. p. 380, F.F. # 4)

There is absolutely no evidence in the records to support these findings.

The house is described in a deed in McPollin to McCaroll dated 1906 (C.A. Opinion p. 2). Mr. Rolfe's possession commenced at least by 1910 according to the testimony of his daughter (T. p. 40). This was years before Silver King Coalition ever existed as an entity (T. p. 176), and 20 years before they even received a deed under which the Defendants claim an interest (1926 Deed from Withey Estate to Silver King). Merle Anderson testified that neither her father or grandfather ever worked for Silver King (T. p. 44). The Defendants' witness, who had only worked for the later corporation, United Park City Mines from 1953, stated he knew of only one instance in Deer Valley where United Park City Mines, not Silver King Coalition, allowed someone to stay on their property (T. p. 173). He did not know if William Rolfe was ever employed by any of the companies comprising Defendants' parent chain (T. p. 176) and he stated that he did not have any knowledge that Charles Rolfe ever worked for any of these companies (T. p. 177). He further added that he had "no real personal knowledge of early history in that regard" (T. p. 174). This apparent "consent" is completely fictional and without support in the record.

SUMMARY OF ARGUMENT

1. Plaintiffs' title which relies on written deeds originates from "tax deeds" from Summit County, some of which are over 70 years old. At the time the deeds were executed, the Plaintiffs' predecessors were not the owners obligated to pay real estate taxes,

they were purchasers. The statute of limitations in § 78-12-5.1 U.C.A. required Defendants to assert their claim in four years. They waited 70 years and their challenge to those deeds is barred.

2. It is undisputed that between at least 1910 and 1931 the Plaintiffs' grandparents open and notoriously occupied their home and paid all taxes assessed. Title vested by adverse possession after 1917 and cannot be challenged now (§ 78-12-7 and 12, U.C.A. (1953)).

3. Plaintiffs' title is derived from a written conveyance(s) in 1914 or 1917. They had "color of title" which, coupled with their exclusive possession of the property for more than forty years, insulates their title from challenge pursuant to the Utah Marketable Title Act, § 57-9-1 et seq.

4. If Plaintiffs don't have vested title, they had a prescriptive use for their house and yard from 70 years of use and ownership.

5. Park City is liable for negligently authorizing the destruction of the Plaintiffs' house. A claim was not necessary but was timely filed. The Trial Court confused the claim with the date of Park City's rejection.

ARGUMENT

I.

The Statute Of Limitations In Section 78-12-5.1 U.C.A. Bars A Collateral Attack On A "Tax Title" After Four Years.

The Rolfe family commenced living in this home in about 1910. From 1910 to 1931, "there was no evidence that anyone other than William Rolfe paid taxes on the property" (C.A. Opinion, p. 3). The

trial court and Court of Appeals found that, while imperfect, the Defendants' predecessors [Park City Smelting, (1883-1912); Louis Withey and Clay Holister (1912-1926, '27); Silver King Coalition Mines (1927-1931+)] (C.A. Opinion, p. 3) were the "owners" obligated to pay all real property taxes assessed against the property as set forth in Section 2651 Compiled Laws of Utah 1907. At a tax sale in 1914 William Rolfe purchased the property and home. The tax deed (Addendum 1) recites that Summit County has received title to this property from a tax sale in 1909 (one year before Mr. Rolfe moved in) and an auditor's deed dated May 1, 1914 *and in accordance with Section 2655, Compiled Laws of Utah 1907*. The statutory authority for the conveyance of this property to Mr. Rolfe is located in Chapter 49 entitled "Sale of Real Estate for Taxes." Section 2655 provides

"Real Estate Deed To County To Be Sold At Auction. Whenever a county has received a tax deed for any real estate sold for delinquent taxes, the Board of County Commissioners shall . . . offer for sale at the front door of the County Courthouse, at the time specified in the notice, all such real property not heretofore sold or redeemed *provided*, that in cases where the description of such real estate is so defective as to convey no title, such real estate shall not be offered."

See also Section 2425, Compiled Laws of Utah, 1907 and § 80-5-12 U.C.A. (1943).

The statutory basis under which William Rolfe purchased this home provides and allows only for the sale of real property to pay delinquent taxes. There is no provision nor authority to sell personal

property and it is submitted that the description of the property as “improvement East U.C. track, Park City” was utilized to identify the property in the same manner as a street address might be utilized and was not intended to change the conveyance from one of real property after a tax sale to one of personal property.

Even assuming the tax deed in 1914 was not valid, there is no evidence of any action which would have invalidated the title received by Summit County from the auditor’s deed dated May 1, 1914 and referred to in Addendum 1. In 1917 a second tax deed from Summit County to William Rolfe was executed (Addendum 2). Once again, for purposes of identification, the property is described as a certain framed dwelling house by lumber yard assessed to William Rolfe in the year 1912. Once again, this deed recites

“This deed is made under authority of Section 2655 Compiled Laws of Utah as amended by Chapter 114 and 115, Laws of Utah, 1911 and in pursuance of an Order of the Board of County Commissioners of said County made on the 5th day of June, A.D. 1917.”

Section 78-12-5.3 defines the acquisition of “tax title” as used in the Statute of Limitations found in Section 78-12-5.2 (U.C.A. 1953) as

“ . . . means any title to real property, whether valid or not (emphasis added) which has been derived through or is dependent upon any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.”

Section 78-12-5.2 provides:

“No action or defense for the recovery or possession of real property or to quiet title or determine the ownership thereof shall be commenced or interposed against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of such tax title to any county, or directly to any other purchase thereof at any public or private sale . . .”

It is uncontested that no other party to this action except Plaintiffs and their predecessors ever occupied, used, or openly asserted any ownership prior to the commencement of these proceedings.

In the event the tax title acquired by William Rolfe was subject to challenge there was a third tax deed conveyed from Summit County to him in 1938. Charles Rolfe, in an attempt to ascertain that all the real property taxes that were due had been paid on the family home inquired of the Summit County Treasurer in 1957. The Treasurer responded by letter (Addendum 5) that another Quit-Claim Deed had been executed from Summit County to William Rolfe in 1938 (this deed was not located). The letter goes on to say that from 1940 until 1954 taxes on his “father’s place in Park City” were taken care of by widow’s abatement and that Mr. Rolfe had paid the taxes for William Rolfe in 1955 and 1956. In 1963 Summit County executed a fourth “Tax Deed” to Plaintiffs’ predecessor Charles Rolfe for “real estate in Summit County” (Addendum 4).

The holding of the Trial Court as affirmed by the Court of Appeals, established that the Plaintiffs were never the “owners” of

the property and, in fact, that is precisely the reason for the adverse ruling. The holding stated the Rolfes were never record title holders except as to that title originating from the tax deeds. The Court of Appeals misapplied this Court's findings in *Dillman v. Foster*, 656 P.2d 974 (Utah, 1982) because in this instance, under the Trial Court's findings, Rolfes had no duty to pay real estate taxes because they were not the owners. Further, the Court of Appeals' statement that one cannot assert the statutes of limitations found in Section 78-12-5.1 unless they have both a tax deed and independent title is simply a misapplication of the rule prescribed in *Dillman*.

The application of the statute of limitations as it relates to this case was treated in the case of *Frederiksen v. La Fleur*, 632 P.2d 827 (Utah, 1981) in which this Court stated that a purchaser of property under a tax deed (whether or not they had title) could invoke the provisions of Section 78-12-5.1, U.C.A. 1953 against the record owner, even if they could not otherwise satisfy the adverse possession requirements and even though the tax title was invalid. In that action, the only claim that the purchaser had was a tax deed from an admittedly defective tax sale and any attack on that title was barred by the "special statute of limitation regardless of either the invalidity of their tax title or their inability to establish an affirmative claim to title apart from their tax title" (p. 831). Similarly, none of the Defendants were ever in actual occupancy or possession of the property.

The obvious truth of this situation is that Plaintiffs and their predecessors lived and treated this property as their own for almost 70 years and it was not until Defendants wished to build a road in

1980 that anyone either challenged or contested their ownership. This Court, in *Dillman v. Foster, Supra* at 978, reiterated the validity of the analysis in *Frederiksen* and stated:

“The Frederiksen case points out that it was to give increased stability to tax titles that in 1951 the Utah Legislature enacted Section 78-12-5.1 through 5.3 which provide a special statute of limitations applicable to tax titles. If the conditions of the statutes are met, the tax title cannot be challenged after four years following its purchase, regardless of its original validity.

**II.
Title Vested In Plaintiffs By 1917 By
Adverse Possession And Cannot Be
Challenged 70 Years Later**

Plaintiffs submit that this Court’s decision in *Park West Village v. Avise*, 714 P2d. 1137 (Utah, 1986) is “on all fours” with this action and requires that title be quieted in the Plaintiffs pursuant to the Adverse Possession Statute 78-12-7.1 U.C.A. (1953) and since title vested in William Rolfe in 1917 the attack on Plaintiffs’ title is now barred by this Statute.

The following unrefuted facts as to the vesting of Plaintiffs’ title are submitted for review.

1. There is no dispute that William Rolfe and his family lived in this home commencing in 1910 and continuing until at least 1964. There was reference in the Trial Court’s findings that William Rolfe worked for Silver King Coalition Mines and was permitted to construct a house on the property (R. p. 380). The Trial Court refused to amend this finding but it was clearly erroneous. Mr. Rolfe

commenced living in the home in 1910 and Silver King Coalition received no alleged conveyance to this property until 1926 or 1927 (1926 deeds from Withey to Silver King). Merle Anderson further testified that neither her father nor grandfather ever worked for Silver King Coalition Mines (T. p. 44). The only witness called by the Defendants (Mr. Osika) had absolutely no knowledge if either of the Rolfes ever worked for the mining company or used the home with permission (T. pp. 174-177). The Plaintiffs and their families who, believing they owned it, paid all taxes on the property (of which they were aware), raised two generations of their family, and have asserted ownership since 1910, including being responsible to Park City to repair the house (Addendum 8, pp. 52-60 of Trial Transcript).

As reflected in the 1917 Deed from Summit County to William Rolfe, the real estate taxes on this property were delinquent in 1909, prior to Mr. Rolfe's occupancy. He paid the delinquent taxes in 1917 and received a tax deed. The Court of Appeals at page 3 of their Opinion found:

“There was no evidence that anyone other than William Rolfe paid taxes on the property until 1931. From 1931 until 1953 the real property was assessed as part of Silver King Coalition Mines. From 1954 to 1969 real property taxes were assessed to and paid by United Park City Mines.

The Court of Appeals has misapplied the *Park West v. Avise*, *supra* case, mistakenly adding another element to the applicable statute of limitation for adverse possession. That new element appears to be that the taxes that are assessed and paid are not

delinquent. It appears that the Court of Appeals has confused the four year statute of limitation found in Section 78-12-5.1 (U.C.A. 1953, amended 1987), that is, acquisition of "tax title" as opposed to meeting the requirements of the adverse possession statute, 78-12-7 and 12, U.C.A. (1953), which only requires that taxes be paid.

Under both the findings of the Trial Court and the Court of Appeals, between the years 1910 and 1931 William Rolfe was not the owner of this property and not legally obligated to pay real property taxes. Both Courts further found that the title by the tax deeds were ineffective, a fact Plaintiffs will concede for purposes of this argument. Therefore, the fact that the taxes were paid late is immaterial to the vesting of title since William Rolfe was in possession of the property and he unquestionably paid all taxes which were assessed between the years 1910 and 1931. The fact taxes may have been paid late does not obviate the fact that all taxes assessed and any penalties or interest due were in fact paid by Mr. Rolfe. *Affleck v. Morgan*, 12 U.2d 200, 364 P.2d 663 (1961). Payment of taxes on the improvements is persuasive of payment of taxes on the ground. *Houghton v. Barton*, 59 Utah 611, 165 P. 471 (1917).

If any taxes were assessed on the realty then they were paid by William Rolfe. If, as the Court of Appeals states, the taxes were assessed on improvements only, and Plaintiffs are relieved of their obligation to pay non-existent assessments (*Park West Village v. Avise*, 714 P.2d 1137 (Utah 1986); *Royal Street Land Company v. Reeve*, 739 P.2d 1104 (Utah, 1987)). Exclusive possession coupled with these tax payments satisfied the statutory scheme and vested

title in William Rolfe seven years after his continuous possession and payment of taxes commenced (1910-1917).

III.

Plaintiffs' "Root Of Title" Is More Than 40 Years Old And Insulated From Challenge By The Utah Marketable Title Act, § 57-9-1

Plaintiffs' grandfather, William Rolfe, received two or three deeds to the subject property. While the descriptions are somewhat incomplete, extrinsic evidence submitted at trial clearly shows that the Rolfe family owned, occupied and treated the property as their own commencing in 1910. The initial deed from Summit County in 1914 (Addendum 1) by its terms was a conveyance used to transfer an interest in real estate as defined by Section 57-1-1 U.C.A. (1953) and in the statutory form of a quit-claim deed for the conveyance of land as specified in Section 57-1-13 U.C.A. (1953 as amended). In addition, Mr. Rolfe received another deed from Summit County similarly reciting that the deed was executed pursuant to a tax sale of the real estate. Because of the length of time since the deeds were executed, it was impossible to ascertain whether or not the second deed was to correct the first or as an additional conveyance, but either deed vested "color of title" in William Rolfe, *Baker v. Goodwin*, 57 Utah 379, 194 P.2d 117 (1920).

It is important to note that beyond the uncertainties in the actual language of these deeds, there was no evidence, nor was it ever questioned that the home and property was easily locatable as being the Rolfe home. The letter from the Summit County Treasurer dated May 16, 1957 clearly demonstrated that the Summit County

Treasurer knew the property in question since he researched the tax history (Addendum 5).

Respondent had actual notice of Plaintiffs' claim of ownership by the recorded deeds and the Plaintiffs' continuous possession *Falcenaro Enterprises v. Valley Investment Co.*, 16 Utah 2d 77, 395 P.2d 915 (1974).

Section 57-9-1 U.C.A. (1953 amended 1963) states:

“Any person having the legal capacity to own land in this State, who has an unbroken chain of title of record to any interest in land for 40 years or more, shall be deemed to have a marketable record title to such interest as defined in Section 57-9-8, subject only to the matters stated in Section 57-9-2”

Since the Defendants' title depends on a conveyance or act which precedes the Rolfe's "root of title," said interest is void, Section 57-9-3 U.C.A. (1953 amended 1963) and the Defendant does not otherwise fall within any exception provided in Section 57-9-2 U.C.A. (1953 amended 1963).

None of the Defendants or their predecessors were ever in possession of this property prior to the commencement of construction in early 1980, while Plaintiffs were in actual possession with "color of title" since at least 1914, the date of the first deed. Examination of the Utah Marketable Title Act and the intent of that legislation is clearly expressed in Section 57-9-9 U.C.A. (1953 amended 1963):

“This act shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing

persons to rely on a record chain of title as described in Section 57-9-1 of this Act, subject only to such limitations as appear in Section 57-9-2 of this Act.”

The Plaintiff’s title is protected from challenge after 70 years.

IV.

If Title Did Not Vest In The Plaintiffs, They Had A Prescriptive Right To Maintain Their House And Yard In Its Historical Location

Plaintiffs continually used and lived at this property for over 70 years, to the exclusion of the world. In the findings prepared by counsel for the Defendants, there was a finding that Silver King Coalition Mines had given Plaintiffs’ predecessor the right to use the property and the impossibility of that permissive use has been discussed earlier. Silver King Coalition Mines did not exist at the time William Rolfe took possession of this property; he never worked for the Company (T. p. 44); and Silver King Coalition Mine never even acquired any claimed interest until 1926 (Ex. 30), and even then, the mining company deed lacked any specific legal description of the property.

Plaintiffs’ family took possession of this home and yard in 1910 (T. p. 40) and occupied the premises continually either in person or by their tenants until 1964 (T. p. 40, 44 and 64). Subsequent to that time they were recognized as the owners by Park City in its demand to them to repair the property in 1978 (T. pp. 54, Ex. 16) and were in the process of rebuilding the home from the late 70s into the 80s (T. pp. 53-56, Exs. 41, 42). During this 70 year period, no entity or other person ever claimed ownership or the right to possession of this

home (T. p. 45). This Court enunciated the requirements for hostile possession which satisfy the adverse possession or prescriptive use requirements in *State Road Commission v. Cox*, 29 Utah 2d 127, 506 P.2d 54 (1973) citing *Pioneer Investment & Trust Co. v. Board of Education*, 35 Utah 1, 8, 99 P. 150, 151 (1909):

“Whenever the possession is of such a character that ownership may be inferred therefrom, then the possession ordinarily may be presumed to be hostile to the rights of the true owner; that is, if a party placed permanent structures upon the land belonging to another, and uses the land and structures the same as an owner ordinarily uses land, then, in the absence of something showing a contrary intention, a claim of ownership may be inferred in favor of the party in possession . . .”

If 70 years of open, notorious and unchallenged possession was not sufficient to vest title in Plaintiffs, it ripened into prescriptive use for the maintenance of the yard and house on this property after 20 years (1930), *Zollinger v. Frank*, 110 Utah 514, 175 P.2d 714 (1946).

V.
**Park City Is Liable For Damages For
Authorizing The Destruction
Of Plaintiffs’ Home**

In August, 1981, Park City issued a demolition permit to Deer Valley Resort (Addendum 6) for the demolition of a building located at 900 Pacific Avenue. It also said “remove building as per photo.” The Plaintiff’s home was located at 112 Pacific Avenue (T. p. 100-

101). The photograph attached to the permit included six structures, including the Avise house (T. p. 95, Ex. 40). It is unknown if any of the home were at "900 Pacific Avenue", but Plaintiffs' home was eight blocks away.

Park City issued the permit and contended, for demolition purposes, Deer Valley Resort owned the property (T. p. 103), despite the earlier letters from Park City to Mrs. Rolfe and their response saying they were rehabilitating the home (Exs. 16 and 17). The building was demolished between August 4, 1981 and September 7, 1981 (T. p. 73). After this action was filed, Park City contended that Deer Valley never owned the property but, in fact, Park City had acquired the property through its deed in 1969 (T. p. 148, Ex. 33). This discrepancy was never addressed by Defendants in this action.

As a result of the demolition permit, Plaintiffs' home was destroyed. Park City claimed they were not responsible because they thought Deer Valley owned the houses (T. p. 115) and needed to be destroyed because they were nuisances. In fact, these houses were in the path of the new highway to Deer Valley (T. p. 99). The address of the Rolfe home was 112 Pacific Avenue and the address of the Avise house was 106 Pacific Avenue.

The Trial Court found that Plaintiffs' claim against the City was barred because they did not submit a timely claim. The Trial Court confused Park City's denial of the claim with the actual claim. The claim (Ex. 18) was submitted August 30, 1982, within one year of the date the destruction was discovered on September 7 (Labor Day), 1980. In Finding of Fact No. 16, the Trial Court found the Notice of Claim was filed September 20, 1982. That date applies to Exhibit 19,

which is the denial of the claim from the Park City Attorney to Plaintiffs' counsel.

Despite the filing of a timely claim, it was not a prerequisite to maintaining this action against Park City. In *Wall v. Salt Lake City*, 5 Utah 593, 168 P.766 (1917) the issues of adverse possession and estoppel against a municipality were the primary relief sought. This Court stated at p. 722:

“Appellant contends that plaintiff was not entitled to damages for the reason she neither alleged in her complaint nor proved at trial she had first presented a claim for damages . . . Respondent contends that the statute referred to does not apply to cases of this kind where the principal relief sought is equitable and the damage prayed for is merely incidental.”

This ruling upheld the determination that filing a claim was not required.”

In addition to dismissing Plaintiffs' claim for damages, the Trial Court found the damages were not proven. The unrefuted testimony of the Plaintiff, Merle Anderson which was admitted without objection, was that replacement cost of the home would be more than \$20,000.00 (T. p. 63). Besides being one of the owners, Mrs. Anderson and her husband have remodeled “a number of houses” (T. p.63) and were actively engaged in property management and rehabilitation.

The Court of Appeals in *Ault v. Devoy*, 739 P.2d 1117, 1120 (Utah App. 1987) held:

“When damages to realty may be measured either by diminution in value or by the cost of restoration, and the plaintiffs give evidence only as to one, it is up to the defendants to show the other measure of damages would be less.”

Plaintiffs met their burden of proof and the failure of the Defendant to either object to the testimony or put on evidence in contradiction demonstrated the proper measure of damages suffered by the Plaintiffs was not less than \$20,000.00. Obviously, it was difficult to ascertain the value of the structure since the home was destroyed and no appraisal was available, but that situation was created solely by the surreptitious destruction of the home.

CONCLUSION


This action is almost identical to *Park West Village v. Avise*, 714 P.2d 1137 (Utah 1986), excluding the enforceability of the option question presented in the former case. Not only are the Avise deeds practically identical to those found in the Rolfe title (Addendum 1-5), the properties are located adjacent to each other in Park City. In fact, the Avise house was also listed in the demolition permit to be torn down by Park City. In the Avise case there is no proof of taxes paid prior to 1975 and the Court established that title had vested by that time. In this instance, all taxes assessed were paid by William Rolfe for at least the years 1910 to 1931, some 21 years. The property had been sold and transferred to Summit County by an auditor's deed in 1909 prior to his occupancy and none of the Defendants' predecessors, who were the "owners", made any

efforts to pay the taxes during that time. Mr. Rolfe was not obligated to pay them. He was either a purchaser or adverse possessor.

The Rolfe family grew up in this house for over 70 years. The finding that their occupancy was consensual cannot stand scrutiny. The only evidence of consent was a vague assertion that Silver King Coalition Mine had given some miners rights to live on their property. This Company doesn't even claim rights to the property until 1926.

Equity and fairness are the reason our legislature provided limitations on actions to challenge title to people's homes. After 70 years of undisturbed possession, certainly those restrictions were meant to insulate Plaintiffs from the stale claims of Defendants. Title should be quieted to the Plaintiffs.

RESPECTFULLY SUBMITTED this 30 day of August, 1989.



Robert Felton

ADDENDUM

1. 1914 Tax Deed to William Rolfe
2. 1917 Tax Deed to William Rolfe
3. 1957 Letter from County Treasurer
4. 1963 Tax Deed to Charles Rolfe
5. 1972 Abatement Letter
6. Demolition Permit
7. Court of Appeals Opinion
8. Transcript of Merle Anderson
9. Page 61 of Transcript RE: Claim

ENTRY NO. 27644.

QUIT CLAIM DEED

SUMMIT COUNTY a municipal corporation, grantor, of the State of Utah, hereby quit-claims to William Rolph, grantee of Park City, Summit County, State of Utah, for a sum of Twenty-eight & 68/100 Dollars, (\$28.68), the following described property in Park City, Summit County, Utah, to-wit:

Improvements East U. C. Tracks, Park City, Utah.

This deed is made from title secured from a certain tax sale in the year 1914 and by an auditors deed to Summit County, dated May 1st, 1914 and in accordance with Section 2655, compiled laws of Utah, 1907.

WITNESS the hand of said grantors, by its duly authorized clerk, this 10th of June, A.D. 1914.

(SEAL)

SUMMIT COUNTY

By Moses C. Taylor Clerk.

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

EXHIBIT 3

On this 10th day of June, A. D. 1914, personally appeared before me, Moses C. Taylor, who being by me duly sworn, did say that he is the County Clerk of Summit County, a municipal corporation of the State of Utah, that he executed the foregoing instrument in behalf of said Summit County and in accordance with a resolution of the Board of County Commissioners passed on the 3rd day of June, A. D. 1914, and said Moses C. Taylor, duly acknowledged to me that he executed the same.

(SEAL)

E. W. Farnsworth
County Recorder.

-----000-----

WITNESSED my hand and the seal of said County at Park City, Utah, this 31st day of May, 1917, at 9 O'clock A. M.

ENTRY NO. 27710.

QUIT CLAIM DEED

SUMMIT COUNTY, a municipal corporation, grantor of the State of Utah, do hereby quit-claims to William Rolfe, Grantee of Park City, Summit County, State of Utah, the sum of One and no/100 (1.00) Dollars, the following described property situated in Park City, Summit County, State of Utah, to-wit:

That certain frame dwelling house by Lumber Yard in Park City, Summit County, Utah, assessed to William Rolfe in the year 1912.

This deed is made under authority of Section 2655 compiled laws of Utah, as amended by Chapters 114 & 115, Laws of Utah, 1911 and in pursuance of an order of the Board of County Commissioners of said County made on the 5th day of June, A. D. 1917.

WITNESS the hand of said grantor, by its duly authorized Clerk, this 21st day of June, A. D. 1917.

SUMMIT COUNTY

By A. C. Hortin, County Clerk.

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

On this 21st day of June, A. D. 1917, A. C. Hortin, personally appeared before me and being duly sworn, did say that he is the County Clerk of Summit County, a municipal corporation of the State of Utah, and that he executed the foregoing instrument in behalf of said County by authority of a resolution of the Board of County Commissioners of said County, passed on the 5th day of June, A. D. 1917, and said A. C. Hortin acknowledged to me that he executed the same.

(SEAL)

Kate W. Kimball
County Recorder.

-----000-----

EXHIBIT 4

June 21st 1917 at 4 O'clock P. M.

May 16, 1957

Mr Charles Rolfe
Oakley, Utah

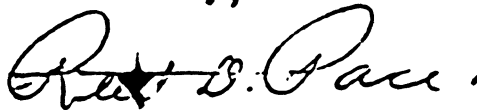
Dear Mr Rolfe,

I checked over the records on the tax situation of your fathers place in Park City, and Found that in 1938 a quit claim deed was issued by the county to your father for \$33.00. The receipt and everything was made out to William Rolfe Sr. So I have no way of knowing who paid that money.

From 1940 until 1954 the taxes were taken care of by widows abatement, by the county commissioners. In the year 1955 you paid the taxes of \$8.06 and in 1956 you paid the taxes in the amount of 7.33.

I hope this is the information that you want, but if I can help you any more please let me know.

Sincerely,



Summit County Treasurer.

EXHIBIT 5

EX-105

Black 28 of Snyder's

Entry No. 97001

TAX DEED

SUMMIT COUNTY, a body corporate and politic of the state of Utah, Grantor, hereby conveys to Charles Rolfe Grantee, of Oakley, Utah the following described real estate in SUMMIT COUNTY, UTAH:

House in lumber yard

This conveyance is made in consideration of payment by the Grantee of the sum of \$12.00 delinquent taxes, penalties, interest and costs, constituting a charge against said real estate, which was sold to said County at preliminary sale for non-payment of general taxes assessed against it for the year 1958 in the sum of \$7.81.

DATED this 13th day of June 1963.

SEAL) (Seal)

SUMMIT COUNTY

By

Reed D. Pace, County Auditor.

* * * * *

Recorded at the request of County Clerk June 19 A.D. 1963 at 1:21 P.M.

Wanda Y. Spriggs, County Recorder

Entry No. 97003

Revenue Stamps \$3.85 (Cancelled)

QUIT-CLAIM DEED

Dr. Dan Oniki and K. Helen Oniki, his wife Grantors, of Salt Lake City, County of Salt Lake, State of Utah, hereby QUIT-CLAIMS to Pete Robert Toly and Mary Lou W. Toly, his wife as joint tenants with the right of survivorship and not as tenants in common, Grantees of Park City, Utah for the sum of Ten Dollars and other good and valuable consideration, the following described tract of land in Summit County, State of Utah:

All of lots 7, 8, and 9 in Block 28 of Snyders

COMMISSIONERS

CARLOS L. PORTER
ROY G. PAGE
G. MELVIN FLINDERS

Summit County
State of Utah

COALVILLE, UTAH

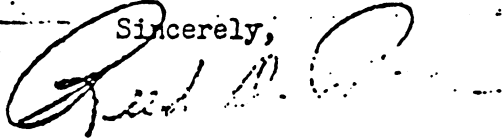
84017

REED D. PACE COUNTY CLERK
BLANCHE R. YOUNG TREASURER
WANDA Y. SPRIGGS RECORDER
ALAN D. FRANDBEN ATTORNEY
RONALD R. ROBINSON SHERIFF
LEO O. PRAZIER ASSESSOR

Aug. 31, 1972

This is to advise you that your application for abatement
of taxes for 1972 has been approved by the County Commissioners
The abatement allowed will be shown on your Tax Notice.

Sincerely,



Reed D. Pace
Summit County Clerk.

EXHIBIT

EXHIBIT

IN THE UTAH COURT OF APPEALS

-----00000-----

FILED

MAR 13 1989
Mary Noonan
Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

Velma Marchant, Elma)
Winterton, Leora Robinson,)
Wanda Penrod, Mona Lichty,)
Merle Anderson,)

Plaintiffs and Appellants,)

v.)

Park City, a municipal)
corporation, and the State)
of Utah,)

Defendants and Respondents.)

OPINION
(For Publication)

Case No. 880131-CA

Third District, Summit County
The Honorable Leonard H. Russon

Attorneys: Robert Felton, Salt Lake City, for Appellants
J. Craig Smith, James W. Carter, Park City,
for Park City
Alan Bachman, Salt Lake City, for the State
of Utah

Before Judges Davidson, Greenwood and Orme.

GREENWOOD, Judge:

Appellants challenge the trial court's ruling that they did not have vested title to certain real property in Park City and thus were not entitled to recover damages for destruction of the home on the property. Appellants claim that they have title to the property through adverse possession, deeds or alternatively, that their use was prescriptive. Accordingly, they claim entitlement to \$20,000 in damages for the destruction of the residence on the property. We affirm.

EXHIBIT 4

EXHIBIT 4

In August of 1981, Park City issued a demolition permit to Deer Valley Resort to remove a building. The building was demolished by Lloyd Brothers Construction Company between August 4 and September 7 of 1981 allegedly to build an access road Deer Valley Resort. Appellants brought this action seeking to quiet title to the real property and to recover damages for the destruction of the home located on the property.

According to appellants, their grandfather, William Rolfe, possessed the home and yard on the property from 1910 until his death in 1939. After his death, his wife continued to occupy the property until 1946. She died in about 1949. William Rolfe's son, Charles Rolfe, rented out the house from 1949 until about 1964. Charles Rolfe died in 1966 and his wife, Ethel Rolfe, died in 1981. Charles Rolfe's daughters, appellants, claim to have visited the property at least once a year since 1964. In support of their claim that they have vested title to the property, appellants rely on the following documents:

1. A quit claim deed from Dan and Belle McPolin to Jesse McCarrell dated March 19, 1906 for "that certain one-story framed, three-room dwelling house situated on the easterly side of Silver Creek and about 100 feet easterly from the lumberyard of the Summit Lumber Company."

2. A quit claim deed from Summit County to William Rolph [sic] dated June 10, 1914 for \$28.68 for "[i]mprovements East U.C. Tracks, Park City, Utah." The quit claim deed states that the deed is "made from title secured from a ~~tax~~ sale in the year 1909 and by an Auditors deed to Summit County, dated May 1st, 1914."

3. A quit claim deed from Summit County to William Rolfe dated June 21, 1917 for \$1.00 for "that certain frame dwelling house by Lumber Yard in Park City, Summit County, Utah, assessed to William Rolfe in the year 1912."

4. A letter from the Summit County Treasurer to Charles Rolfe dated May 16, 1957 stating that in 1938 the county issued a quit claim deed to Charles Rolfe's father. The letter also stated that from 1940 to 1954, taxes were taken care of by widows abatement and that Charles Rolfe paid taxes of \$8.06 in 1955 and \$7.33 in 1956.

5. A tax deed from Summit County to Charles Rolfe dated June 13, 1963 for "House in lumber yard," stating "[t]his conveyance is made in consideration of payment by the Grantee of the sum of \$12.53 delinquent taxes, penalties, interest and

costs, constituting a charge against said real estate for the year 1958 in the sum of \$7.81."

The State of Utah claims chain of title through a series of documents, all of which were recorded, and all, except numbers 3, 4 and 5 below, contained a metes and bounds description of the property. The documents are as follows:

1. A patent from the United States government, undisputedly containing the property in question, to George Snyder on April 5, 1882.

2. A deed from George Snyder to the Park City Smelting Company, dated November 14, 1883.

3. A deed from the Park City Smelting Company to Lewis H. Withey and Clay H. Hollister on September 21, 1912. The deed did not contain a metes and bounds description, but described the conveyed property as "all of the real property or rights or interest in real property belonging to the Park City Smelting Company and situated in the County of Summit, Utah."

4. A deed from the executors of Lewis H. Withey's estate to Silver King Coalition Mines Company on November 5, 1926. The deed did not have a metes and bounds description, but conveyed "all the estate, right, title, interest, property, claim and demand whatsoever of the said Lewis H. Withey . . . [of] the property above described."

5. A trustee's deed from Clay Hollister, Withey's tenant in common, to Silver King Coalition Mines on February 18, 1927. The deed did not contain a metes and bounds description but described the property as "all other real property or rights or interests in real property . . . belonging to Park City Smelting Company, and situated in the County of Summit, State of Utah."

6. A deed from Silver King Coalition Mines Company to United Park City Mines Company, dated May 8, 1953.

7. A deed from United Park City Mines Company to Park City, dated April 2, 1969.

8. A deed from Park City to the State of Utah, dated June 7, 1982.

There was no evidence that anyone other than William Rolfe paid taxes on the property until 1931. From 1931 to 1953, the real property in question was assessed as part of Silver King Coalition Mines Company. From 1954 to 1969, real

property taxes were assessed to and paid by United Park City Mines.

The trial court found that appellants' chain of title was discontinuous and, at best, conveyed title to improvements on the property only. The court concluded that the State's claim to title of the property was superior to that of appellants and, therefore, quieted title in the State of Utah and dismissed appellants' complaint.

On appeal, appellants assert that: 1) the trial court erred in finding that they did not have vested title to the property by deed or adverse possession; 2) even if appellants do not have title to the property, they established prescriptive use; 3) respondents are barred from challenging appellants' tax title by the statute of limitations set forth in Utah Code Ann. § 78-12-5.1 (1987); and 4) respondents' claims are barred by laches and estoppel.

Vested Title

Appellants first claim on appeal that the trial court erred in concluding they did not have vested title to the property by deed. Appellants assert they obtained tax title to the property by virtue of the 1914 quit claim deed and the 1963 tax deed from Summit County, and any action challenging that title is barred by the four year statute of limitations set forth in Utah Code Ann. § 78-12-5.1 (1987). In addition, they claim title under the Marketable Record Title Act, Utah Code Ann. § 57-9-1 through -10 (1986), commencing with the 1917 quit claim deed as the "root" of title. The trial court concluded that the tax deeds under which appellants claimed title did not convey title to the underlying real property.

In reviewing the trial court's conclusions of law, we apply a correction of error standard with no deference to the trial court. Creer v. Valley Bank and Trust Co., 97 Utah Adv. Rep. 12, 12 (Dec. 9, 1988). A person who has a duty to pay taxes cannot fail to pay taxes and subsequently purchase the land at a tax sale and thereby attempt to strengthen his title to the property. Dillman v. Foster, 656 P.2d 974, 979 (Utah 1982); Crofts v. Johnson, 6 Utah 2d 350, 313 P.2d 808, 810 (1957). In addition, one who has a tax deed but does not hold title to the property cannot assert the special statute of limitations contained in Utah Code Ann. § 78-12-5.1 (1987). Dillman, 656 P.2d at 978-79.

In this case, there is no indication that William Rolfe was the record titleholder. Even assuming he received quit claim deeds from Summit County in 1914, 1917 and 1957 after

paying delinquent taxes, we agree with the trial court that, at most, he received title to the improvements described in the deeds. The 1963 tax deed, similarly, conveyed only the improvements, not the underlying real property. Taxes at that time were apparently separately assessed on improvements and real property in Summit County, and the State's predecessor in title, United Park City Mines, paid real property taxes from 1954 to 1969. The deeds did not strengthen Rolfe's title to the property, but merely indicated that he paid delinquent taxes on the property. The State's title, on the other hand, while flawed, is clearly superior to that of appellants. Therefore, we hold that the trial court did not err in concluding that appellants failed to establish title to the property by deed and that the tax deed statute of limitations was inapplicable.

Adverse Possession

Appellants' second assertion of error is that the trial court erred in finding that appellants did not have title to the property by adverse possession. The proponent of an adverse possession claim has the burden of proving full statutory compliance, including the payment of all taxes levied and assessed. Neeley v. Kelsch, 600 P.2d 979, 982 (Utah 1979). However, if a party in possession of property and his predecessors have paid taxes based on the value of improvements on the property and no taxes have been levied based on the valuation of the land, the party has established title to the property by adverse possession if all other elements of adverse possession are met. Park West Village, Inc. v. Avise, 714 P.2d 1137, 1140-41 (Utah 1986); see also Royal Street Land Co. v. Reed, 739 P.2d 1104, 1106 (Utah 1987).

In Avise, the trial court found that Mrs. Lake failed to acquire title to property because she failed to pay taxes on the property. The Utah Supreme Court reversed, stating that the trial court's finding that Mrs. Lake failed to pay taxes on the property was contrary to the evidence. The court noted that an employee of the Summit County assessor's office testified at trial that he had searched the records in that office and could find no evidence that any taxes had been assessed on the land prior to 1975. The undisputed evidence established that Mrs. Lake received a tax notice every year and paid the tax that was levied. Although those taxes were based only on the value of the improvements on the property, the Utah Supreme Court held that because no other taxes were levied, Mrs. Lake had "paid all taxes levied and assessed" in accordance with Utah Code Ann. § 78-12-12 (1977). The court also noted that there was no evidence that there were any delinquent taxes owing on the land for the years prior to 1975

or that the land had been sold by the County for failure to pay taxes for those years.

Appellants claim that this case is indistinguishable from Avisé. We disagree. In Avisé, unlike this case, Mrs. Lake established that she had paid taxes on the improvements to the property for twenty-three years. In this case, however, the only evidence that appellants' predecessors had paid taxes on the property for seven continuous years were quit claim and tax deeds and a letter from Reed Pace to Charles Rolfe. There was no evidence that taxes were paid prior to delinquency. At best, the deeds and letter indicate that William Rolfe paid delinquent taxes on the personal property at various tax sales. Further, appellants established that Charles Rolfe paid taxes on improvements on the property in 1955, 1956 and 1958, but it was also proven that real property taxes were paid by Silver King Coalition Mines Company those same years. Thus, unlike Avisé, appellants failed to prove that they paid taxes on the home or on the underlying land for a continuous seven year period. See Utah Code Ann. § 78-12-7.1 (1987). Payment of delinquent taxes at a tax sale cannot be used to establish the payment of taxes necessary to a successful claim of adverse possession. Otherwise, anyone purchasing property at a tax sale would be able to claim the number of years taxes had gone unpaid as a credit on the seven year period required for adverse possession. In addition, in contrast to Avisé, the quit claim deeds themselves establish that taxes were assessed and not paid during the years appellants claim to have established title by adverse possession. Therefore, we hold that appellants failed to sustain their burden of proving payment of taxes for the requisite seven year period, and the trial court correctly concluded that appellants did not acquire the property by adverse possession.

Prescriptive Easement

Appellants also assert that even if they do not have fee title to the property by adverse possession or chain of title, they have a prescriptive easement. Appellants are unclear as to what they claim flows from the alleged prescriptive easement. If they claim that a prescriptive easement, if established, would give them ownership rights in the underlying property, they err. See Osborn & Caywood Ditch Co. v. Green, 673 P.2d 380, 382 (Colo. Ct. App. 1983). A prescriptive easement does not result in ownership, but allows only use of property belonging to another for a limited purpose. North Union Canal Co. v. Newell, 550 P.2d 178, 179 (Utah 1976). A prescriptive easement "arises under our common law from a use

of the servient estate that is 'open, notorious, adverse, and continuous for a period of 20 years.'" Crane v. Crane, 683 P.2d 1062, 1064 (Utah 1984) (quoting Jensen v. Brown, 639 P.2d 150, 152 (Utah 1981)). The trial court concluded that appellants had not established a prescriptive easement.¹ A claimant of prescriptive easement must establish the necessary elements by clear and convincing evidence. Garmond v. Kinney, 91 N.M. 646, 579 P.2d 178, 178 (1978). Appellants not only had the burden of proof at trial, but on appeal are similarly required to marshall all evidence supporting the trial court's findings and then to demonstrate that the evidence, when viewed most favorably to the trial court, is insufficient. Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985). Appellants have not marshalled the evidence supporting the trial court's findings in connection with the issue of prescriptive easement. It further follows that on appeal, appellants are required to marshall evidence which would support each element required to prove their claim of prescriptive easement. For example, the trial court found that appellants' predecessors in interest worked for Silver King Coalition Mines Company, and were given permission by the company to build a house on the property in question. Appellants claim that this finding is not supported by the evidence but they do not provide other argument or reference to the trial record to establish that the use was "adverse," one of the required elements for prescriptive easement. Similarly, appellants have not compiled evidence which establishes the other necessary elements and have further failed to analyze what rights or claims to damages might flow from the alleged prescriptive easement. We will not consider conclusory arguments without citation to either the record or cases involving pivotal issues. Randall v. Salvation Army, 100 Nev. 466, 686 P.2d 241, 244 (1984). Therefore, we find that appellants did not establish a prescriptive easement to the property.

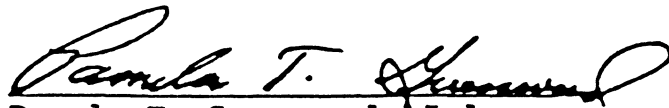
Laches and Estoppel

Finally, appellants assert that Park City is barred from claiming ownership of the property by laches and estoppel. Those issues were not raised in the trial court and, therefore,

1. The court also concluded that the prescriptive easement claim was barred by Utah Code Ann. § 78-12-5 (1987). However, in Morris v. Blunt, 49 Utah 243, 161 P. 1127 (1916), the Utah Supreme Court held that the predecessor section to the present code does not apply to actions for prescriptive easements.

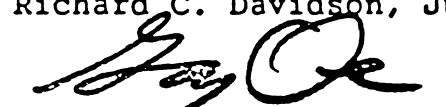
we decline to reach them. See James v. Preston, 746 P.2d 799,
801 (Utah Ct. App. 1987).

Affirmed.


Pamela T. Greenwood, Judge

WE CONCUR:


Richard C. Davidson, Judge


Gregory K. Orme, Judge

1 this property?

2 A We got a letter from -- What was his name?

3 Q Let me back up for a minute and see if I can
4 help you with this. This is Plaintiffs' Exhibit 16. Can
5 you identify this?

6 A This is a letter I wrote back to Robert Scanter
7 telling him to --

8 Q Is it dated?

9 A It is dated 1978.

10 Q And it is signed by you?

11 A Yes.

12 Q And written by you?

13 A Uh-huh (yes).

14 Q And at the top there is "copy" written on that?

15 A Uh-huh (yes).

16 Q Is this a copy of the letter you wrote him?

17 A This is a copy of the letter I wrote to him.

18 MR. FELTON: We would move admission of Exhibit 16,
19 Your Honor.

20 MR. SMITH: No objection, Your Honor.

21 MR. BACKMAN: None.

22 THE COURT: 16-P is received.

23 Q (By Mr. Felton) This letter is dated May 5,
24 1978. Merl, it appears to be a response.

25 A Right.

1 Q Who did the letter identify Mr. Scanter as?
2 A He was someone who wrote to us from the Park
3 City Building Inspector.
4 Q Do you have a copy of his letter? Do you know?
5 A I can't remember. It seems like we did have a
6 copy. Whether we lost it, I think we did.
7 Q Let me show you -- is this what you mean?
8 A Yes.
9 Q This is the other letter?
10 A Uh-huh (yes).
11 Q This is Exhibit 17, the date appearing on that
12 is April of '79?
13 A Yes.
14 Q This is '78. You have any other letters?
15 A I think the one from this one we probably lost
16 track of.
17 Q Can you recall what the letter was about?
18 A I think he just told us that the property needed
19 to be fixed up or we had to do something. They were going
20 to try to clean up Park City, so we were going to try to
21 clean it up, too.
22 Q And that was the purpose of this letter?
23 A Yes.
24 Q And what was the reason you wrote this letter?
25 A Told him not to tear it down, we wanted to take

1 care of it.

2 Q Let me show you what has been marked Plaintiffs'
3 Exhibit 17 and ask you if you can identify that letter?

4 A This is another letter from Scanter. It came to
5 mother.

6 Q There is some writing on the back of this exhibit.
7 Do you know who wrote that?

8 A I am sure I must have written this on here. This
9 letter was sent to mother, Ethel Rolfe, in Oakley, Utah.

10 Q And where did you find this letter?

11 A In the documents.

12 Q Did you reply to this letter?

13 A I don't remember whether I did or not.

14 MR. FELTON: We would move admission of Plaintiffs'
15 Exhibit 17, Your Honor.

16 MR. SMITH: We are going to object on foundation,
17 Your Honor.

18 THE COURT: Why does it lack foundation? Who is
19 it from?

20 MR. FELTON: Mr. Scanter.

21 THE COURT: Park City.

22 MR. SMITH: It purports to be a letter from the
23 City. I suppose we can object on hearsay. It is being
24 admitted to prove something and the person is not here
25 to identify he wrote the letter, or wrote the letter or

1 signed the letter.

2 THE COURT: Objection is sustained.

3 Q (By Mr. Felton) Merl, in late, early-late 70's,
4 or early 80's, were you involved in this property a lot?

5 A Yes. We were the one -- my family was the one
6 that was really working on it to get it fixed up.

7 Q I should have it marked. It wasn't marked,
8 I am sorry. And at that time were you also talking with
9 people about the property? People in Park City or people
10 other places?

11 A We tried to get -- we talked to Park City about
12 it, about getting the lights turned on. We went up there.
13 We re-wired the house.

14 MR. SMITH: Your Honor, could I voir dire the
15 witness?

16 THE COURT: You may.

17 MR. SMITH: Could you tell me who you talked to
18 at Park City about the electricity?

19 THE WITNESS: Yes.

20 MR. SMITH: Could you please tell me?

21 THE WITNESS: I went right to the Utah Power and
22 Light office, I am sorry.

23 MR. SMITH: Thank you, Your Honor. That is the
24 point I am trying to bring out. Park City has never had
25 an electrical utility.

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THE WITNESS: That is right.

MR. FELTON: I will object to that.

THE COURT: That probably should have been brought out on cross examination. If you had an objection as to foundation, that is what it should have been.

MR. SMITH: No objection, Your Honor.

THE COURT: Sometimes we get those things mixed up, but that testimony is in.

Q (By Mr. Felton) Merl, do you have a real fresh recollection about everything you did at this time?

A No, if I hadn't written down a few things, I wouldn't remember. It is hard to remember dates and all of this.

Q Let me show you Plaintiffs' Exhibit 41 and ask you if you can identify this?

A This is a little log I wrote down, kind of keeping track of times we went up to Park City. And sometimes I wrote it down and sometimes I didn't.

Q As to the dates and the actions reflected on that exhibit, were those made on or about the time identified? When I say --

A Pretty much so. I tried to write it down then.

Q If you look at that, does that document refresh your memory as to why you wrote those down and the subject matter of each of those recollections?

1 A Yes, it kind of refreshes my memory.

2 Q Would you read it, please?

3 A It says --

4 Q You have got to start at the first, though.

5 THE COURT: Let's take a recess. We have been
6 going quite a while and Dorothy needs a rest. Let's take
7 a ten-minute recess at this time.

8 (At 10:55 a.m. Court recessed until approximately
9 11:05 a.m.)

10 THE COURT: Let the record show that the Court
11 just had a conference with counsel in chambers and the
12 Court in regards to 14, Exhibit 14, has on further
13 consideration felt that it should reserve its ruling as
14 to whether or not 14 will be received, and the record
15 should now reflect that Exhibit 14-P is not received.
16 However, the Court has it under consideration. Okay, you
17 may proceed.

18 MR. FELTON: Thank you, Your Honor.

19 Q (By Mr. Felton) Merl, would you read the notes
20 that you have previously identified?

21 A "1980, July: Val and Narvel went to Park City
22 to put in the floor in the front room."

23 Q Who are these people?

24 A Val is my oldest son and Narvel is my husband,
25 Narvel Anderson.

1 Q To expedite this, if they are going somewhere
2 and doing something is that the property in question?
3 A That is the property we are talking about here.
4 Q Go on.
5 A " -- front room and roof."
6 "July 24: Val, Narvel and Vance." Val Anderson
7 is my eldest son, Narvel my husband and Vance Anderson my
8 second son put on the rest of the roof. These are our
9 boys from California. These two eldest ones.
10 July 26: "We are up to Park City to see about
11 why they haven't turned on the electricity."
12 July 11: "Talked to Attorney Orton on Park City
13 property about getting the probate into mother's name. He
14 said to get back to him. It would depend on how much the
15 property was worth."
16 "August 11: "Went to Oakley and took mother to
17 Park City to see engineer, to see property, to have it
18 surveyed, talked to Jan's assistant."
19 August 15: "Called Steve Beker in Park City to
20 find out cost. He will call me back."
21 August 15: "Steve Beker called Sean," that is
22 our son at home, "while we were gone to the temple. And
23 he said for us to call him back. I called but he had
24 left on an errand."
25 August 19: "Went to Park City to see about survey."

1 August 28: "Went to see Harold Styles about
2 survey and also title company. Paid Styles \$200 to
3 start the survey. Also got back to the deed from Lawyer
4 Christiansen."

5 Monday, Labor Day, September 1st: "Went to Park
6 City to put up new rigid pipe for electricity."

7 Tuesday September 2nd: "Called Park City, Utah
8 Power and Light, to have lights turned on."

9 Q That was all 1980?

10 A That was all in 1980. And now this is still 1980.
11 August 5: "Went to Coalville, took mother, talked to
12 Attorney Christiansen about probate."

13 August 7: "Called Christiansen's office. He
14 was not in."

15 Q Is that Terry Christiansen you are referring
16 to?

17 A Here (indicating).

18 Q The Assistant Summit County Attorney?

19 A Yes.

20 Q Go on.

21 A August 11: "Placed a person-to-person call to
22 Attorney Orton."

23 And September 2nd: "Called Park City Hall in
24 Park City. Also called inspector in Park City to have
25 the pipe inspected."

1 August, 1982, "Called Mr. Felton, the attorney."

2 August, 1982, "Went to Park City. Someone had
3 put a fence around the property, Rolfe property."

4 And 1982, "Went to Salt Lake to see about a
5 letter to the city about our house. They had torn it
6 down."

7 MR. FELTON: Thank you. Your Honor, under the
8 rules we are not capable of admitting this document, though
9 the adverse party is. So, I will leave it there. We
10 have read it.

11 THE COURT: Under the rules you have two
12 possibilities. You have a document that is used to refresh
13 a witness's testimony, in which case it should not be
14 read into evidence, but may only be used to refresh the
15 witness's testimony and you must give the adverse party a
16 chance to review that document, or it is a recorded
17 recollection. It is something that was recorded at or
18 near the time things were done and, in which case, the
19 document is admitted and then you can have it read into
20 evidence, I suppose. But it had no objections either
21 way. Right now the testimony is in and the document just
22 sits there and you aren't offering it because you can't
23 under t h e rules?

24 MR. FELTON: That is correct, Your Honor. I
25 wanted to alert you as to the reason why we are not.

1 Your Honor, there are a couple of items out
2 of order here that we have reviewed. Plaintiffs' Exhibit 18,
3 which is a claim which I filed with Park City August 30th,
4 dated August 30, 1982, and a response from Tim Clyde,
5 Plaintiffs' Exhibit 19 we would move admission of those
6 two documents, Your Honor.

7 MR. SMITH: No objection, Your Honor. I think
8 we stipulated to those.

9 THE COURT: Mr. Bachman?

10 MR. BACHMAN: No objection, Your Honor.

11 THE COURT: 18 and 19 are received.

12 Q (By Mr. Felton) Merl, in your conversations with
13 Mr. Scanter or the other people that you have testified to
14 in regards to your notes, did anyone ever assert or tell
15 you that you didn't own the property or your family
16 didn't?

17 A No.

18 Q Did anyone ever tell you that someone, other than
19 you or your family owned the property?

20 A No.

21 Q Merl, ~~has~~ the use of the property historically
22 gone on for as long as you have knowledge of it? As you
23 described it, has that use been continuous?

24 A It has been continuous, yes.

25 Q To the average person, is it obvious to the

STATUTES

under any such assessment must be adjourned until the time of redemption under the previous sale shall have expired.

Property bought by county to be sold at private sale, §§ 2626, 2655.

2652. Id. In case an assessment is made under the provisions of the next preceding section, and the lands are not redeemed from a previous sale, had under § 2623 as provided by law, no sale must be had under the assessment authorized by the next preceding section so long as the county holds the certificate of sale, unless directed by the board.

2653. Id. Redemption. In case property is sold to the county as purchaser, pursuant to § 2623, and is subsequently assessed pursuant to § 2651, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, interest, and costs.

2654. Distribution of money received for redemption. Whenever property sold to the county pursuant to the provisions of this title is redeemed, or the certificate of sale is assigned, as herein provided, the moneys received on account of such redemption or assignment must be distributed as follows: The original taxes and forty per cent of interest and costs received must be apportioned to the state, county, city, town, school district, and other taxing districts interested, in the proportion of their respective taxes, and the balance must be paid to the county. The county treasurer must keep an accurate account of all the moneys paid in redemption of property sold to the county, and for assignments of certificates of sale thereof, and must, on the first Monday of June in each year, make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county auditor any grant of property so sold for taxes, the same shall be recorded, at the request of the county auditor, free of charge by the county recorder, and shall be immediately reported by the county auditor to the board of county commissioners.

Delinquent taxes, etc., to be paid to boards of education as fast as collected, § 1937.

2655. Real estate deed to county to be sold at auction. Whenever a county has received a tax deed for any real estate sold for delinquent taxes, the board of county commissioners shall, during the month of May in each year, after giving the statutory notice, offer for sale at the front door of the county courthouse, at the time specified in the notice, all such real property not heretofore sold or redeemed; *provided*, that in cases where the description of such real estate is so defective as to convey no title, such real estate shall not be so offered. The county clerk is authorized to execute deeds thereon in the name of the county, and attested by his seal, vesting in the purchaser all of the title of the state, of the county, and of each city, town, school, and other taxing districts interested, in the real estate so sold. The money arising from such sale must be paid into the county treasury, and the treasurer must settle for the same as in the case of money received for redemption, provided in the next preceding section. The board of county commissioners may, at any time after the period of redemption has expired and before the property has been deeded to the county or sold as herein provided, permit redemption from any sale where the property has been sold to the county, but in no case for a less sum than the tax, interest, and costs. All property in which there is no purchaser at the sale provided for in this section shall thereafter be disposed of on the day of the first regular meeting of the board of county commissioners in any month, at either public or private sale, as the said board may determine, and the money received therefor shall be apportioned as in the manner of tax sale redemptions. Am'd '05, p. 85; '07, p. 4.

May be sold at private sale, § 2626.

Assessment and sale, § 2651.

County commissioners have the right to fix the

minimum sum to be received for property sold at a tax sale at a sum equal to the amount of tax, interest, and costs due at date of sale. Heywood v. Co. Com'rs, 18 U. 57; 55 P. 79.

15. To direct and superintend the collection of all moneys due the state and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and have failed to pay over or deliver the same, and against all debtors of the state; in which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

16. To draw warrants on the state treasurer for the payment of money directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, and the specific appropriation applicable to the payment thereof;

17. To furnish the state treasurer on the last day of each month with a list of warrants drawn upon the treasurer, specifying the amount and number of each warrant, and the name of the person in whose favor it is drawn;

18. To procure and have printed all state licenses, and to sign the same, and furnish the state treasurer with licenses and charge him with the same;

19. To authenticate with his official seal all drafts and warrants drawn by him and all copies of papers issued from his office;

20. To collect and pay into the state treasury all fees received by him;

21. To perform the duties of a member of all boards of which he is or may be made a member by the constitution or laws of the state, and such other duties as are prescribed by the constitution and by law.

Am'd '99, p. 108; '05, p. 10.

Salary \$2,000 per annum, § 2049x.

May appoint deputies, §§ 2427x3, 2460.

Auditor is state recorder of marks and brands, § 36; state recorder of pedigrees of stock, § 48; and state sealer of weights and measures, § 2725.

Election, qualifications, term, duties, Con. art. 7.

Not to draw warrants unless claim approved by board of examiners, exceptions, § 946.

Fees of state auditor, § 966.

It is the duty of the state auditor to examine the accounts of state and county officers, and satisfy himself that lawful fees are collected, reported, and paid. If fees are not paid as provided in this chapter, it is the duty of the auditor to institute proper proceedings for collection.
State, ex rel. Richards v. Stanton, 14 U. S. 106 P. 1109.

2421x. It shall be unlawful for the state auditor to audit or draw a warrant in payment of any claim against the state for any money, unless appropriation has been previously made for such purposes or unless authorized by law. '07, p. 185.

2422. (Repealed. '99, p. 110.)

2423. School funds. The state auditor must keep a separate account of the school fund, and of the interest and income thereof, together with the moneys as may be raised by special tax or otherwise for school purposes; and he must, on the 31st day of March, and of December of each year, report to the superintendent of public instruction, a statement of the securities held by the school fund, of the moneys in the treasury subject to appropriation, and the several sources from which they accrue. He must draw his warrants on the state treasurer in favor of the treasurer of any county or of any school of education, whenever such treasurer presents, with his endorsement, an order drawn by the superintendent of public instruction in favor of such county.

Am'd '99, p. 11.

School moneys to be paid over on warrant of state auditor, § 1863.

2424. Warrants, order in which issued. All warrants for claims which have been audited by the board of examiners and filed in his office must be drawn in the order of the numbers placed upon them by that board.

2425. Actions for delinquent payments. Whenever any person has

received moneys, or has money or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, or belonging to or held in trust by the state, and fails to render an account therefor, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within twenty days after such requisition, the state auditor must state an account against such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from the time of failure; a copy of which account in any suit thereon shall be prima facie evidence of the things therein stated; but in case the state auditor cannot, for want of information, state an account, he may in any action brought by him aver the fact, and allege generally the amount of money or other property which is due to or which belongs to the state.

The failure of the county clerk to pay fees collected by him as provided by law after an account has been stated with him and demand made, entitles the state to charge said clerk twenty-five per cent damages, and interest at the rate of ten

per cent; nor is payment to the county treasurer a sufficient release.

State, ex rel. Richards v. Stanton, 14 U. 180; 46 P. 1109.

2426. Access to all state books. The state auditor shall have access to all state offices during business hours for the inspection of such books, papers, and accounts thereof as may concern his duties.

2427. Bond. The state auditor must execute an official bond in the sum of \$50,000.

Public school fund, Con. art. 10, sec. 3.

Annual levy of state school tax, § 2598.

CHAPTER 4.

Immigration, Labor and BUREAU OF STATISTICS. '11-185-

2427x. Bureau created. State auditor ex officio commissioner. A state bureau of statistics is hereby created and established, and the said bureau shall be under the control of the state auditor. The state auditor shall be ex officio the commissioner of said state bureau of statistics. '01, p. 47; '07, p. 198. *Ref*

2427x1. Duties of bureau. The duties of said bureau shall be to collect, sort, systematize, and present in annual reports to the governor statistical details relating to agriculture, mining, manufactures, and other industries of the state; said reports to be published annually and distributed under the direction of the state board of examiners. '01, p. 47.

2427x2. Powers of commissioner. Witnesses. The commissioner of the bureau of statistics shall have power to issue subpoenas, administer oaths, and take testimony in all matters relating to the duties herein required by said bureau, said testimony to be taken in some suitable place in the vicinity to which testimony is applicable. Witnesses subpoenaed and testifying before the commissioner of the bureau shall be paid the same fees as witnesses before a justice's court, such payment to be made out of the contingent fund of the bureau in advance, but such expense for witnesses shall not exceed \$100 annually. Any person duly subpoenaed under the provisions of this section, who shall wilfully neglect or refuse to attend or testify at the time and place named

law for obtaining information from taxpayers, assessor may penally assess the property; and must make notation on local roll opposite name of assessee); § 460 (requiring assessor to estimate value of property, not listed by another person, where owner or claimant is absent or unknown).

Iowa Code 1939, § 7112 (if any corporation or person refuses to furnish verified statements, state tax commission or assessor, as the case may be, must list and assess the property according to best information obtainable, and must add to taxable valuation 100 per cent thereof; the valuation and penalty must

be separately shown, and shall constitute the assessment).

Mont. Rev. Codes, § 2007 (similar; " * * * and the value so fixed by the assessor must not be reduced by the board of county commissioners").

1. Assessor's estimate.

Assessment of tax upon assessor's conclusion that taxpayer was in "\$100,000 class," arrived at by assessor after observance of living habits and external appearances of taxpayer, was not authorized under this section. *Fox v. Groesbeck*, 63 U. 401, 226 P. 183.

80-5-11. Id. Assessor to Report Information Gained to Other Counties.

In case such affidavit or statement discloses property in any county other than that in which it is made, the assessor must file the affidavit or statement in his office, and transmit by mail a certified copy of the same to the assessor of each county in which the property is shown to be situated, who must assess the same as other taxable property within such county.
(C. L. 17, §§ 5881, 5885.)

Comparable provisions.

Mont. Rev. Codes, § 2010 (similar).

80-5-12. In Name of Owner, Mandatory, if Known—If Unknown.

If the name of the owner or claimant of any property is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name; if unknown to the assessor, and if it does not appear of record as aforesaid, the property must be assessed to "unknown owners."
(C. L. 17, § 5884.)

History.

This section is much like 1 Comp. Laws 1888, § 2012. It is practically identical with R. S. 1898, § 2524; Comp. Laws 1907, § 2524.

Comparable provisions.

Cal. Rev. and Tax. Code, § 611, as amended by Laws of 1941 (similar).

1. Duty of assessor.

Under this section, assessor must avail himself of information furnished by public records, to ascertain name or names of the owners of taxable property in the county, otherwise listing name of owner as "unknown" will render tax sale void. *Jungk v. Snyder*, 28 U. 1, 8, 78 P. 168, applying Revenue Act of 1896.

2. Life tenant and remainderman.

A life tenant should be assessed as owner during the continuance of life estate. *Sheppick v. Sheppick*, 44 U. 131, 136, 138 P. 1169.

3. Joint owners and tenants in common.

Formerly, at least, rule was that where realty was owned jointly, assessment to one of owners "et al." was erroneous. *Asper v. Moon*, 24 U. 241, 67 P. 409.

Formerly, at least, rule was that where realty was owned by tenants in common, delinquent list showing that realty was owned by named one of tenants in common "et al." was insufficient. *Asper v. Moon*, 24 U. 241, 67 P. 409.

4. Effect of erroneous assessment

Plaintiff in an action shows no title by tax sale and deed where property was not assessed to defendant or its predecessor, the real owner, but was assessed to one not the owner; therefore a sale for taxes upon such an assessment and a deed in pursuance thereof have no binding effect as against the real owner. *Salt Lake Inv. Co. v. Oregon Short Line R. Co.*, 46 U. 203, 217, 148 P. 439, aff'd 246 U. S. 446, 62 L. Ed. 823, 38 S. Ct. 348. And see *Jungk v. Snyder*, 28 U. 1, 78 P. 168.

ant who attempted to exclude the other cotenants after the purchase. *Massey v. Prothero*, 664 P.2d 1176 (Utah 1983).

—Former record titleholders.

Where former record titleholders were obligated to pay the 1964 taxes on the real property but failed to do so and conveyed away all their interest and title in the property prior to the final or auditor's tax sale, and at such tax sale the former titleholders appeared and paid the delinquent taxes and purchased an auditor's tax deed, the former titleholders, by meeting their tax obligation at the tax sale, could not acquire any title or interest in the property beyond that which they already had, which

sale, therefore, the former titleholders could not and did not purchase a tax title at the tax sale and were not entitled to the protection of the tax title statutes, §§ 78-12-5.1 to 78-12-5.3. *Dillman v. Foster*, 656 P.2d 974 (Utah 1982).

Validity of section.

This statute is a valid statute of limitations designed to validate tax titles. Although Laws 1951, ch. 58 repealed parent statute of Laws 1951, ch. 19, it did not repeal ch. 19. Under such circumstances it is not reasonable to assume that the legislature intended to repeal Laws 1951, ch. 19. *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884 (1955) (see Compiler's Notes above).

COLLATERAL REFERENCES

Brigham Young Law Review. — Utah's Short Statutes of Limitation for Tax Titles: The Continuing Specter of *Lyman v. National Mortgage Bond Corp.* — A Need for Remedial Legislation, 1976 B.Y.U. L. Rev. 457.

Am. Jur. 2d. — 51 Am. Jur. 2d Limitation of Actions § 84 et seq.

C.J.S. — 53 C.J.S. Limitations of Actions § 42.

Key Numbers. — Limitation of Actions ⇐ 19(7).

78-12-5.2. Holder of tax title — Limitations of action or defense — Proviso.

No action or defense for the recovery or possession of real property or to quiet title or determine the ownership thereof shall be commenced or interposed against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of such tax title to any county, or directly to any other purchase thereof at any public or private tax sale and after the expiration of one year from the date of this act. Provided, however, that this section shall not bar any action or defense by the owner of the legal title to such property where he or his predecessor has actually occupied or been in actual possession of such property within four years from the commencement or interposition of such action or defense. And provided further, that this section shall not bar any defense by a city or town, to an action by the holder of a tax title, to the effect that such city or town holds a lien against such property which is equal or superior to the claim of the holder of such tax title.

History: C. 1943, 104-2-5.10, enacted by L. 1951, ch. 19, § 2.

"Date of this act". — The term "date of this act," referred to in the first section, means the effective date of Laws 1951, Chapter 19, i.e., May 8, 1951.

Cross-References. — Marketable record title, § 57-9-1 et seq.

Occupying claimants, § 57-6-1 et seq.

Tax sales, § 59-10-29 et seq.

History: C. 1953, 57-8-36, enacted by L. 1975, ch. 173, § 19.

Condominium Ownership Act. — See § 57-8-1 and notes thereto.

Meaning of "amendments". — The term "amendments," referred to throughout this sec-

tion, means those amendments made by 1975, ch. 173, §§ 1 through 19, which now appear as §§ 57-8-3, 57-8-6, 57-8-7, 57-8-11, 57-8-13 through 57-8-14, 57-8-16.5, 57-8-18, 57-8-24, 57-8-27, 57-8-32.5, 57-8-35, 57-8-36

CHAPTER 9

MARKETABLE RECORD TITLE

Section	Section
57-9-1. What constitutes marketable record title.	57-9-5. Notice of claim of interest — Contents — Filing for record.
57-9-2. Rights and interests to which marketable record title is subject.	57-9-6. Applicability of provisions.
57-9-3. Marketable record title held free and clear of interests, claims and charges.	57-9-7. Existing statutes of limitations and recording statutes not affected.
57-9-4. Filing of notice of claim of interest authorized — Effect of possession of land by record owner of possessory interest.	57-9-8. Definitions.
	57-9-9. Legislative purpose and construction.
	57-9-10. Extension of limitation period.

57-9-1. What constitutes marketable record title.

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in § 57-9-8, subject only to the matters stated in § 57-9-2. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

(1) the person claiming such interest or

(2) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest: with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

History: L. 1963, ch. 109, § 1.

NOTES TO DECISIONS

ANALYSIS

Adverse possession.

Boundary by acquiescence.

Adverse possession.

City's continuous possession and use of canal for over ninety years and use of the land on both sides thereof in the maintenance of the

canal, established title in such land by adverse possession; possession was hostile in that it was of such a character that ownership could be inferred therefrom; city acquired title de-

cessively holding adversely in order to tack the possession of a predecessor in possession to that of his successor. Numerous cases hold that a deed does not in and of itself create any privity between grantor and grantee as to land not described in the deed, although occupied by the grantor in connection therewith, even if the grantee enters into possession of the adjoining area claimed to be held adversely by his grantor and the grantee uses such land in connection with the land actually conveyed. *Home Owners' Loan Corp. v. Dudley*, 105 Utah 208, 141 P.2d 160 (1943).

Waiver or loss of right to plead statute.

—Fraud.

Where husband commenced action to have property which was held in wife's name regarded as being held in trust for him, while wife's divorce proceeding was pending against him, and spouses entered into agreement that

if husband would dismiss his suit to recover property, wife would dismiss her action for divorce, and in pursuance of this agreement, husband dismissed his suit but wife prosecuted her action to final decree, her conduct constituted palpable fraud and her plea of statute of limitation could not prevail in subsequent suit by husband. *Anderson v. Cercone*, 54 Utah 345, 180 P. 586 (1919).

When action brought.

—Action by minor.

Action by minor within two years after he had attained majority, to recover real estate, was not barred although administrator was not discharged, since rule that heirs are barred where administrator is barred was inapplicable, property being distributed to minor under § 75-12-8 (since repealed). *Robbins v. Duggins*, 61 Utah 542, 216 P. 232 (1923).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — A primer of Utah Water Law, 5 J. Energy L. & Pol'y 165 (1984).

Am. Jur. 2d. — 51 Am. Jur. 2d Limitation of Actions § 84 et seq.

C.J.S. — 53 C.J.S. Limitation of Actions § 34 et seq.

A.L.R. — When does cause of action accrue, for purposes of statute of limitations, against action based upon encroachment of building or other structure upon land of another, 12 A.L.R.3d 1265.

Key Numbers. — Limitation of Actions 19(1).

78-12-5.1. Seizure or possession within seven years — Proviso — Tax title.

No action for the recovery of real property or for the possession thereof shall be maintained, unless the plaintiff or his predecessor was seized or possessed of such property within seven years from the commencement of such action; provided, however, that with respect to actions or defenses brought or interposed for the recovery or possession of or to quiet title or determine the ownership of real property against the holder of a tax title to such property, no such action or defense shall be commenced or interposed more than four years after the date of the tax deed, conveyance, or transfer creating such tax title unless the person commencing or interposing such action or defense or his predecessor has actually occupied or been in possession of such property within four years prior to the commencement or interposition of such action or defense or within one year from the effective date of this amendment.

History: R.S. 1898 & C.L. 1907, § 2859; C.L. 1917, § 6449; R.S. 1933 & C. 1943, 104-2-5; L. 1943, ch. 18, § 1; 1951, ch. 19, § 1.

Compiler's Notes. — This section reflects the amendment by Laws 1951, ch. 19, § 1 to § 104-2-5 (Code 1943). Although § 104-2-5 was repealed by Laws 1951, ch. 58, § 3, the Supreme Court held that Laws 1951, ch. 19 was not repealed. Laws 1951, ch. 58, § 1 enacted

the successor to § 104-2-5, now compiled as § 78-12-5. See Notes to Decisions, below.

The term "effective date of this amendment" referred to in this section, means the effective date of Laws 1951, Chapter 19, i.e., May 8, 1951.

Cross-References. — Marketable record title, § 57-9-1 et seq.

Occupying claimants, § 57-6-1 et seq.

Tax sales, § 59-10-29 et seq.

Superiority of tax title.**—Quitclaim deed.**

Quitclaim deed given to utility company's grantor which failed to show that the maker had any title to the land the deed purported to convey other than recital that such maker was the heir at law of the original owner did not convey title to the utility company's grantor and the utility company did not have any standing to challenge the title held by later purchaser of tax deed. *State Rd. Comm'n v. Thompson*, 17 Utah 2d 412, 413 P.2d 603 (1966).

Tolling of statute.**—Previous quiet title action.**

Section 78-12-40 permitted defendants attacking a tax title in a quiet title action to prove tolling of the statute of limitations where, within one year previous, an action in which a similar claim had been asserted by plaintiffs was dismissed not on the merits. *Thomas v. Braffet's Heirs*, 6 Utah 2d 57, 305 P.2d 507 (1956).

COLLATERAL REFERENCES

Brigham Young Law Review. — Utah's Short Statutes of Limitation for Tax Titles: The Continuing Specter of *Lyman v. National Mortgage Bond Corp.* — A Need for Remedial Legislation, 1976 B.Y.U. L. Rev. 457.

Am. Jur. 2d. — 72 Am. Jur. 2d State and Local Taxation § 1031 et seq.

C.J.S. — 53 C.J.S. Limitations of Actions § 42; 85 C.J.S. Taxation § 966 et seq.

Key Numbers. — Limitation of Actions ⇐ 19(7); Taxation ⇐ 803.

78-12-5.3. Definitions of "tax title" and "action."

(1) The term "tax title" as used in § 78-12-5.2 and § 59-2-1364, and the related amended §§ 78-12-5, 78-12-7, and 78-12-12, means any title to real property, whether valid or not, which has been derived through or is dependent upon any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.

(2) The word "action" as used in these sections includes counterclaims and cross-complaints and all civil actions wherein affirmative relief is sought.

History: C. 1943, 104-2-5.11, enacted by L. 1951, ch. 19, § 3; 1987, ch. 4, § 305.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, added the subsection designations and made a statutory reference change.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides that this section has retrospective operation to January 1, 1987.

Cross-References. — Tax sales, § 59-10-29 et seq.

NOTES TO DECISIONS

ANALYSIS

Invalid tax title.

"Tax title".

—Failure to attach affidavit.

Invalid tax title.

Tax title holders may avail themselves of the special statute of limitations provided for tax titles regardless of either the invalidity of their tax title or their inability to establish an affirmative claim to title apart from their tax title. *Frederiksen v. LaFleur*, 632 P.2d 827 (Utah 1981).

"Tax title".

—Failure to attach affidavit.

Failure of county auditor to attach his affidavit to county assessment roll did not void auditor's tax deed to county since term "tax title," as defined by this section, would indicate that Legislature intended to include within statutes of limitation tax titles which were initiated by tax sales the records of which would not show

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Limitation of Actions § 84 et seq.

C.J.S. — 53 C.J.S. Limitations of Actions 34 et seq.

A.L.R. — When does cause of action accrue, or purposes of statute of limitations, against

action based upon encroachment of building or other structure upon land of another, 12 A.L.R.3d 1265.

Key Numbers. — Limitation of Actions 18.

8-12-7. Adverse possession — Possession presumed in owner.

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof within the time required by law; and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that the property has been held and possessed adversely to such legal title for seven years before the commencement of the action.

History: L. 1951, ch. 58, § 1; C. 1943, app., 104-12-7.

Compiler's Notes. — This section is identical to former § 104-2-7 (Code 1943) which was repealed by Laws 1951, ch. 58, § 3. Section 104-2-7 was also amended by Laws 1951, ch. 58, § 1; that provision is compiled as

§ 78-12-7.1 herein. The Supreme Court held the amendment was valid despite the repeal of § 104-2-7. See Notes to Decisions, below.

Cross-References. — Marketable record title, § 57-9-1 et seq.

Occupying claimants, § 57-6-1 et seq.

NOTES TO DECISIONS

ANALYSIS

admission that third party owns land.

adverse possession.

applicability of section.

boundary dispute.

tenants.

exclusiveness of statutory methods.

federal Government.

reclosure of mortgages.

permissive use.

marital wife.

resumption of possession.

running of statutory time limitation.

school lands.

tax title.

polling statute.

water rights.

admission that third party owns land.

In action to recover possession of certain real property, defended on ground of adverse possession, defendant's application to enter lands homestead held direct admission that legal title to lands was in United States. *Hanks v. State*, 57 Utah 537, 195 P. 302 (1921).

Adverse possession.

Where grantor's use of water ditch on another's land is permissive, his grantee's possession does not become adverse without claim of right. *Yeager v. Woodruff*, 17 Utah 361, 53 P. 1045 (1898).

Possession, which will create easement in another's land by analogy to statute of limitations, must be hostile under a claim of right,

Covenant in deed restricting material to be used in building construction, 41 A.L.R.3d 1290.

Validity and construction of restrictive cove-

nant controlling architectural style of buildings to be erected on property, 47 A.L.R.3d 1232.

Key Numbers. — Deeds ⇐ 29.

57-1-13. Form of quitclaim deed — Effect.

Conveyances of land may also be substantially in the following form:

QUITCLAIM DEED

_____ (here insert name), grantor, of _____ (insert place of residence), hereby quitclaims to _____ (insert name), grantee, of _____ (here insert place of residence), for the sum of _____ dollars, the following described tract _____ of land in _____ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this _____ day of _____, 19____.

Such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance.

History: R.S. 1898 & C.L. 1907, § 1982; C.L. 1917, § 4882; R.S. 1933 & C. 1943, 78-1-12.

NOTES TO DECISIONS

ANALYSIS

After-acquired title.

Interest conveyed.

Statutory and other forms.

After-acquired title.

Quitclaim deed operates to convey estate of grantor "at the date of such conveyance," and does not convey an after-acquired title. *Duncan v. Hemmelwright*, 112 Utah 262, 186 P.2d 965 (1947).

An after-acquired title does not pass by a quitclaim deed. *Dowse v. Kammerman*, 122 Utah 85, 246 P.2d 881 (1952).

A quitclaim deed does not raise an estoppel as to an after-acquired title. *Dowse v. Kammerman*, 122 Utah 85, 246 P.2d 881 (1952).

Interest conveyed.

Quitclaim deeds do not imply the conveyance of any particular interest in the property. Grantee acquires only interest of his grantor,

"be that interest what it may." *Nix v. Tooele County*, 101 Utah 84, 118 P.2d 376 (1941).

Statutory and other forms.

Statutory form of quitclaim deed is permissive only, and use of words "remit, release and quitclaim" in deed to mining claim passed all of grantor's title. *Ruthraff v. Silver King W. Mining & Milling Co.*, 95 Utah 279, 80 P.2d 338 (1938), distinguished, *Adamson v. Brockbank*, 112 Utah 52, 185 P.2d 264 (1947).

Our statute requires no word of art to quitclaim. In construing whether an instrument passes title, each case stands on its own words, combinations thereof, recitals, and other attendant facts, having in mind the rule that generally the instrument is construed in favor of the grantee. *Meagher v. Uintah Gas Co.*, 123 Utah 123, 255 P.2d 989 (1953).