

1982

# Kathryn C. Williams v. Danny Gene Boyer and Michael Boyer : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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KATHRYN C. WILLIAMS  
Conservator of the estate  
of JOHN E. BOYER

Plaintiff -Appellant

vs

DANNY GENE BOYER and  
MICHAEL BOYER

Defendants -Respondents

Case No. 18125

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APPELLANTS BRIEF

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Appeal from the Judgment of the Third Judicial District  
Court for Salt Lake County  
Hon. David B. Dee, Judge

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IN THE SUPREME COURT  
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Defendants-Respondents

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APPELLANTS BRIEF

Statement of the Kind of Case

This is an action brought by the Conservator of the Estate of an incompetent person, one John E. Boyer, to have two Quit Claim Deeds declared invalid because of the incompetency of one of the grantors.

Disposition in the lower court

The lower court found the issues in favor of the defendants and ruled the deeds to be valid.

Relief sought on appeal

The plaintiff seeks a reversal of the decision of the lower court.

Statement of the Facts

The deeds, which are in evidence, were dated May 18th, 1976, six years ago. The controversy is between the members of a family, the family of Eva Boyer, the mother of the plaintiff. The action goes back at least thirty two years, the time of the conception of Michael Boyer, one of the beneficiaries of the deeds and a defendant in the above entitled

A boarder, now deceased, as is also Mrs. Eva Boyer, but who, at that early time was consorting with Eva and who had assumed in every respect the name and image of John E. Boyer who still survives and presently resides in the home of the plaintiff as conservator.

As early as December 10, 1960, John E. Boyer was found by the team of two medical experts to be the victim of Alzheimer's disease, which, quoting from the last line of the letter, being exhibit 1, "is consistent with a deteriorating process in the cerebral cortex."

On the 6th day of June, 1961, Eva herself had John, committed to the Utah State Hospital at Provo for two and a half years. From the second paragraph of the Hospital report which forms Plaintiffs Exhibit 6 we find the following:

"On examination he was found to be cooperative, childlike, euphoric, irrelevant, circumstantial with poor judgment. He was given a neurological examination as well as electroencephalograph with the opinion that he probably had an Alzheimers disease."

As a factual matter, an interesting disclosure is also found at the top of paragraph 5, the last paragraph on page 2 of the exhibit:

"He married at the age of 22 to his present wife who was then sixteen. Apparently between the two of them they have had four children, however, two other children that are at home are fathered by a man who lives with them as a boarder."

This, taken in connection with the testimony of the plaintiff gives at least a motive for the mother, Eva's procuring the deeds, the a tempted transfer of her and her husband John E. Boyers property to these two boys, Michael her own son by James DeBerry and Danny Gene, the son of her daughter, conceived with her approval and raised as a son:

Q How do you know she was sleeping with James DeBerry?  
A Because, until my sister was aged thirteen...I was fourteen years old, I would take my mother in coffee, and she was in the

bed with James H. DeBerry, and he was fondling us girls and I specifically told her that I would not come in there and give him-bring her coffee or anything anymore-but if my sister wanted to let him mess around with her that was fine.

Q I think I misunderstood your answer. This man was in bed with your mother and was fondling you and a sister, too?

A Thats right and she stayed in bed and watched.

Q At the same time?

A This is true."

Mr. DeBerry died in 1964. Mrs. Mrs. Eva Boyer, after having procured  
May 18th, 1976

the quit Claim deeds complained of,/died in April, 1979, nearly three years later.

#### ARGUMENT

##### POINT 1.

Mr. John E. Boyer, who still survives, was incompetent to sign a quit claim deed on the 18th day of May, 1976 and they the deeds should have been held to be invalid.

It was the opinion of Doctor Ernest L. Wilkinson, Doctor Louis G. Moench - Plaintiffs Exhibits 1 and 6, that Mr. Boyer was suffering from Alzheimers Disease in 1960 and 1961. Doctor Moench was called as a witness for the plaintiff and testified in this regard as follows:

Q. Doctor will you describe this disease that you call Alzheimers Disease?

A. Alzheimers Disease is a disease of early or premature degeneration of the cerebral cortex that is part of the brain essentially concerned with the thinking, judgment and memory but its quite similar to the process seen in advanced age, but it might occur much earlier in life than the advanced age changes we see.

Q Is it crucial Doctor@ Is there a cure for it?

A There is no known cure nor prevention at this time.

Q You said something in that earlier report about Deteriation. Would you tell us what you had in mind by that deterioration description?

A Deteriation is both an organic deterioration in which some of the cells are lost, they atrophy or dissappear, and there is intellectual and memory deterioration, judgment deterioration, deterioration of appropriate responses for instance.

Q What we are concerned with here Doctor is the question of the competency of this patient Mr. John Elwood Boyer, any time between these two examinations: to wit, on the 18th day of May, 1976, when he is reputed to have signed a quit claim would you have an opinion as to whether or not he would be competent to sign a quit claim deed on the 18th day of May 1976?

A Yes I would have an opinion.

Q What would your opinion be Doctor?

A My opinion would be that the likelihood of his being significantly different or better than at the time of my first or my second examination would be extremely small.

Q Can you statistically appraise it?

A Well I would put a number on it as about a one percent chance that he would be significantly better at that time.

Q And ninety nine percent what would that be?

A Well, ninety nine per cent chance that he would be approximately the same as he is at this time or at the time of my previous examinations, or worse at that time.

Q At either of those times Doctor, in your opinion would Mr. Boyer know the meaning of a quit claim deed or the result of signing one in your opinion?

A I would have the opinion that he would not know the meaning of such a legal document." (R-134-5)

Kathryn Williams the plaintiff testified with reference to the competency of the subject Mr. John E. Boyer as follows:

Q Would it be difficult to get him to sign a quit claim deed at this time?

A I don't know. He will sign anything. You just hand him a paper and say I want you to sign this and he'll put his signature on anything for anybody.

Q Would that have been true over a period of time?

A Yes.

Q How much of a period?

A I'd say his whole life. (R-155-156.)

Q It is your testimony that he was competent all during that time?

A No No he wasn't. He wasn't competent, he hasn't been competent for many years. If he was he would have taken care of his business.

Q He was never competent as long as you know, he was never competent in your thinking?

A No why would he be and stay with a woman when she'd doing that? (R 159-7)

Jack Williams, the husband of Kathryn the plaintiff, testified as follows

Q How long have you been married to Kathryn?

A Thirty Two Years.

Q During that time have you associated with Mr. John Boyer?

A yes.

Q Had you made observations with reference to his conduct and his reactions to various situations?

A over the years yes.

Q Now would you tell us whether he seems to be getting better as far as your observations are concerned, or whether he seems to be getting worse.

Mr. Weston. Objection your honor, within what time frame are we speaking.

Mr. Knowlton, 1960 to the present.

The Court. All right, 1960 to the present time.

A My observation was that when I knew him, when I first got married he was unable to conduct business then.

The Court When was that.

Witness Well thirty two years ago.

Court Well were talking about the period of time from 1960 to the present.

Witness. OK that's starting 32 years ago. In my opinion I observed that he couldn't conduct business; and the reason that I came to this conclusion was (1) He didn't control any money. He didn't control finances of the house, he did not sleep with his wife. He was sleeping in another room. (2) This progressively got a little worse as the years wore on. His memory got worse. he rattled on more. He was incoherent more. (R 172-173)

Wayne Williams the Brother in Law of the Plaintiff was called and testified as follows:

Q Mr. Williams. Give us some idea about the frequency of your visits.

...with John Elwood Boyer with him at any time.

A Well I'd average it out about once a week over 32 years.

Q And-

A I don't know any definite dates or anything, but when I first observed Mr. Boyer I knew that he did have a mental condition.

Q How was it evidenced to you from your observations?

A Well he didn't seem to be able to concentrate, and he would interrupt people and his conversations were more on a childish level. He didn't seem to be in reality.

Q Over the period of time that you have referred to?

A The first time I seen him about 32 years ago,

Q During that period of time did he seem to improve at any particular time.

A Over the years he increasingly got worse.

Q up to the present time.

A Up to now. (R-190-191)

Walter D. Williams was called as a witness for the plaintiff and testified as follows:

Q are you the son of Mr. Jack Williams and Mrs. Kathryn Williams the plaintiff in this case?

A Yes.

Q Have you made any observations over this period of time as to whether or not Mr. Boyer was ever -- do you know what oriented means or dis-oriented?

A If you're -- you know, if your talking about his condition, about him getting on different subjects and about him being able to handle himself financially, and being able to understand things pertaining, you know, just to simple things, yeah. I feel that he really hasn't been in control of his facilities for a long time.

Q Have you during all this time ever talked with him when he seemed to be lucid? Do you know what lucid means?

A It means when hes in control of all his faculties.

Q Yes.

A No.

Q Have you made any observations or are you able to tell from your association whether or not Mr. Boyers condition has improved during the years that you have known him?

A I really don't think they have improved. I think my Grandfathers condition has gotten worse over the years. (R-207, 208)

The testimony of John E. Boyer, having been proffered by the plaintiff, was taken by the court in its chambers. It took up five pages of the transcript. It is offered as a perfect picture of senility: (R-222-227)

THE COURT: Yeah, but what would you do if they did fight?

MR. JOHN E. BOYER: Dad died at 45 years old, a man 200 something pounds, pretty well.

The Court: I'm saying, what would you do if those--if your son Mike and your daughter Cleon fought about the property? What would you do?

MR. JOHN E. BOYER: I dont (indicating)--I can't make no sense out of it. I can hear your voice but it won't give it to me in the ear. Now, as I grow each and every day a little older it gets a little more difficult. Of course I should go and get some of those business concerns and have it adjusted in some way. This interference.

I'm familiar with his condition, and you've all talked to him.

As a matter of fact, the plaintiff submits, John E. Boyer, one of the signers of the quit claim deed complained of, on the 18th day of May, 1976, was unable to know what he was signing or realize its effect.

POINT II

This being a confidential relationship case, it was error for the court to fix the burden of proof on the plaintiff.

There can be no doubt that Mrs. Boyer knew of the mental condition and of the mental capacity of her husband John Elwood Boyer as evidenced by the facts that she procured his retirement from the Mountain Fuel Supply, his commitment to the Utah State Mental Hospital at Provo, that she substituted him for a boarder, relegated him, Mr. Boyer, to the basement and finally having born two children by the boarder, in death, caused his body to be burried in her burial ground and herself finally to be burried beside him, concerning all of which there is no dispute.

By the Court: It is your burden to show that they are authentic, Mr. Knowlton, and so far your witnesses have told me some things about the competency of Mr. Boyer and Dr. Moench came as close as anybody to indicating that in his judgment maybe Mr. Boyer didn't know exactly the extent of his holdings or what the consequences meant.

It is the plaintiff's position that the burden of proof, since this was a transaction between close relatives, is upon the defendants to prove fairness, which they have not done.

Some assistance may be obtained in this regard from the holding of the Utah Supreme Court in the case of Johnson v. Johnson, 337 P2 420, quoting from the top of page 422:

"In assaying the sufficiency of proof, the plaintiffs here have significant help in the rule that when a confidential relationship is shown and a gift or conveyance is made to a party in a superior position, a presumption arises that the transaction was unfair. This presumption has the force

of evidence and will itself support a finding, if not overcome by countervailing evidence. Therefore the burden was upon the defendant Calvin Johnson to convince the court by a preponderance of the evidence that the transaction was fair. The finding to the contrary is justified and it will not be disturbed on appeal unless the contrary evidence was so clear and persuasive that all reasonable minds would so find."

"to the same effect is the more recently decided Seequist case, 1974, reported at 524 P<sub>2</sub> 598, as follows:

"The court found that as fiduciary and a person having confidential relationship with Gladys, James had a duty to act fairly, make a disclosure of material information and to take no unfair advantage of his superior position. We think it was correct in finding that James breached his duty and also in its reliance upon both the extreme disparity between the market value of the property, somewhere between \$62,500 and \$91,250, and the amount paid by the plaintiff \$28,000, and the fact that the plaintiff made no attempt to secure for the defendant Gladys any independent advice or representation even though he was aware that she had no independent knowledge of the value of the property involved."

Also and to the same effect, that the burden of proof lies with the defendants, is Dan B. Dobbs from page 682 of his text book on Remedies:

"Courts have therefor said that where he deals with the persons he represents, the burden is upon him to justify the transaction if it is later and that unless he sustains the burden of showing that it is fairly made, he may be made to disgorge any gains he received in the transaction."

### POINT III

The deeds were further invalid for lack of a legal delivery.

The Utah case of Given v. Lambeth, 351 P<sub>2</sub> at page 961 holds:

"But such conveyances are not effective until there is an actual delivery with an intent to transfer ownership."

Mr. Boyer was incompetent to understand the legal effect of what he was doing or what was done and could not therefore have intended to transfer. For his incapacity to make delivery the deeds were wholly invalid.

## CONCLUSION

The main thrust of the defendants case is to the effect that both parties, Mr. and Mrs. Boyer conveyed such title as they each individually had by the deeds in question. This conclusion on their part presupposes that the deeds were validly executed, while in fact and in truth they were not validly executed.

Both deeds were invalid at their inception for the reason that one of the parties, Mr. Boyer, was not mentally competent to execute a deed nor to effect a delivery of a deed nor to understand the legal effect of such a transaction.

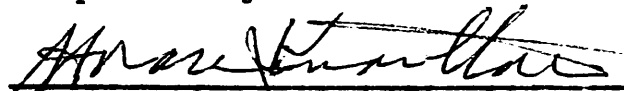
Reference is made to and a quotation taken from 162 ALR at 892 which states in the second paragraph of the Annotation: In order that this specific question may arise, it is necessarily presupposed that the deed or mortgage was validly executed by all of the grantors or mortgagors and delivered to the grantee or mortgagee .

In this case, it is respectfully submitted there was neither a validly executed deed nor a legal delivery.

Interestingly there is a case cited in the annotation at the bottom of page 893, that of Consolidated Coal Company v. Yents, 25 F2 404: "Where there are several joint owners who intend to convey the land held by them by a deed to be executed by all and all but one of them join in executing a deed which is delivered to a third person to obtain the signature of the other owner and then to deliver it to the grantee, the deed is not delivered as to those who have signed unless the other grantor also executes it."

Stepping aside for a moment from the Doctors and the relatives and the friends who appear as witnesses in this case, ask yourself, can you think of a man with a spark of intelligence who will, and especially in the presence of his growing children, abandon his wife to a boarder, a lover or a consort, and then 12 years after the death of the boarder execute a quit claim deed which would deprive his natural beneficiaries of their inheritance in favor of the two born of such a relationship? It is contrary to every human instinct, an affront to the imagination. It could only be with a person afflicted with such a disease as Alsheimer, one who had become senile, a completely incompetent person, one who had no understanding of the property or of the consequences of such an instrument, one who was incapable of making a delivery of such an instrument. It is reminiscent of that "Breaths there a man with soul so dead" poem.

Respectfully submitted.



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Served 2 copies on GARY A. WESTON  
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