

1982

Heber D. Nelson et al v. Richard Stoker et al : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

HEBER D. NELSON et al

Plaintiff-Respondent

vs

Case No. 18244

RICHARD STOKER et al

Defendant-Appellant

APPELLANT'S BRIEF

Appeal from the Summary Judgment of the
Third Judicial District for Salt Lake County

Honorable G. Hal Taylor

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FILED

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BRIEF OF APPELLANT
STATE OF UTAH

NATURE OF CASE AND DISPOSITION IN LOWER COURT

This action involves questions of law regarding the priority of various claims against certain real property. Based on argument of counsel, the trial court granted a summary judgment in favor of Respondents' ruling that, notwithstanding Utah Code Annotated §78-45b-9, Respondents' interest is superior to Appellant's.

RELIEF SOUGHT ON APPEAL

The Appellant prays that this Court reverse the ruling of the lower court and hold that Appellant's interest in the real property in this dispute be declared superior in claims and interest to all other claims of interest in said property.

STATEMENT OF THE FACTS

On or about March 27, 1978, Respondents purchased a parcel of real property in Salt Lake County, more particularly described as Lot 11, Pioneer Estates #3 Subdivision. Respondents executed a Deed of Trust in the sum of \$40,700 in favor of Western Mortgage Loan Corporation and secured by the said real property. The Trust Deed and Note were duly recorded on March 29, 1978.

Thereafter, on or about May 1, 1979, Respondents conveyed said real property to Richard Stoker, receiving from Stoker a Trust Note in the sum of \$8,464.76. Said Note was

recorded June 5, 1979.

On or about February 20, 1979, a judgment in the sum of \$21,610 against Richard Stoker in favor of the State of Utah was abstracted in the Salt Lake County Recorder's Office. This judgment was taken against Stoker for unpaid child support.

Stoker subsequently failed to make the required payments to Respondents pursuant to the Trust Note. Respondents declared the Note in default and initiated foreclosure proceedings against said real property. Respondents filed a Complaint seeking a determination that Respondents' Trust Deed created a lien superior in right and title to lien created by the abstract of award in favor of the State of Utah.

On January 29, 1982, the Honorable G. Hal Taylor awarded Respondents the requested relief pursuant to granting Respondents' request for a Summary Judgment.

ARGUMENT

I

THE TRIAL COURT ERRED IN RULING THAT RESPONDENTS' LIEN IS SUPERIOR IN RIGHT AND TITLE TO APPELLANT'S LIEN PURSUANT TO UTAH CODE ANNOTATED 78-45b-9(1).

In recent years, the Legislature has facilitated collection of unpaid child support for the express purpose of relieving the state welfare burden. In Utah Code Annotated §78-45b-1.1 the Legislature stated:

It is declared to be the public policy of this state that this chapter be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through welfare programs.

Therefore, pursuant to legislative directive, the statutes comprising this chapter are to be liberally construed.

The state contends that a judgment lien docketed pursuant to the Public Support of Children Act, Utah Code Annotated 78-45b-1 et. seq., takes priority over and is superior to all other liens including a purchase money mortgage. Utah Code Annotated §78-45b-9(1) provides that a properly docketed and filed award constitutes a lien upon all real and personal property of the obligor. The statute further provides: "This lien shall have the same preference against the assets of the debtor as claims for taxes".

This Court ruled on the priority of tax liens in Union Central Life Insurance Co., vs Black, 67 Ut. 268, 247 P. 486 (1926). In Union Central, this Court held that tax liens are superior to pre-existing mortgage liens upon real property.

In Union Central, this Court considered the specific issue of whether a personal property tax lien attached to the debtor's real property is a position superior or prior in right to an antedating mortgage lien. The Court adopted the general principle of law that the legislature has the undoubted right and

power to make taxes a lien upon all the property of the owner of the taxed property, and also to give such lien priority over all other liens of whatsoever nature". Id. at 271 247 P. 486, 487.

This Court expressed its commitment to the rule of liberal construction of taxation liens over liens created by private contract. This commitment derives from the intent of the Legislature to clothe tax liens with superior status. In addressing the relative equities of prioritizing tax liens this Court stated: "The court must determine the legislative intent as found in the statute and apply that intent". Id at 487.

In the case at bar , the Appellant's judgment against co-Defendant Stoker was docketed on March 16, 1979, some three months prior to the recordation of Respondents' Trust Deed. A title report issued prior to closing disclosed to Respondents the judgment against co-Defendant Stoker. Respondents maintain that they failed to appreciate the effect of Appellant's judgment with regard to creating a lien on after-acquired real property. However, Respondent, in his own affidavit filed with the Court, stated that he is "an experienced real estate investor".

Certainly an experienced real estate investor who has ready access to legal counsel cannot be excused due to a mistake of law. The information contained in the title report would put the experienced real estate investor on inquiry

notice as to any potential harmful effects to his investment. Further, the title report instilled Respondent with actual notice that, in the event of a breach, Respondent would have had to contend with the claims of the various judgment lien creditors.

As previously demonstrated, the Legislature has the express authority to give priority to tax liens. Utilizing that authority, our Legislature has chosen to give tax liens a superior priority as against antedating mortgage liens.

The Legislature has afforded judgment liens for child support the same preferential status as that given to tax liens. As noted, Utah Code Annotated 78-45b-9(1) provides this preference.

CONCLUSION

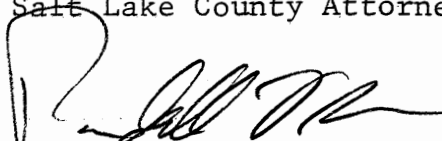
The trial court erred in assigning to the child support judgment lien the same status as that of any other judgment creditor. This action directly controverts the legislative intent with respect to child support judgment liens. Further, affirming the decision of the trial court would deprive the state of a valuable enforcement tool in the collection of unpaid child support.

For the foregoing reasons, this Court should reverse the decision of the trial court and declare that the State's

child support judgment lien has priority over Respondent's
claim.

Respectfully submitted,

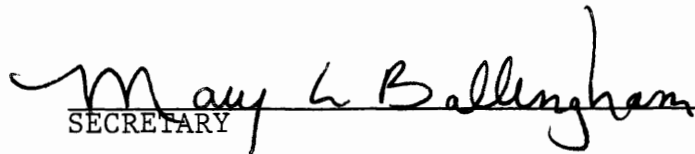
TED CANNON
Salt Lake County Attorney

A handwritten signature in black ink, appearing to read "R. L. Skeen", is written over a horizontal line.

RANDALL L. SKEEN
Deputy County Attorney
Attorney for Defendant-Appellant,
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CERTIFICATE OF MAILING

I hereby certify that on the 5 day of
May, 1982, I mailed a true and correct copy of the
foregoing Brief, postage prepaid, to Dwight L. King,
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SECRETARY