Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1982

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

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.
David L. Wilkinson; Ted Cannon; Attorneys for Appellant;
Dwight L. King; Attorney for Respondent;

Recommended Citation
Brief of Respondent, *Nelson v. Stoker*, No. 18244 (Utah Supreme Court, 1982).
https://digitalcommons.law.byu.edu/uofu_sc2/2935

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

HEBER D. NELSON, et al, Plaintiff-Respondent, vs. RICHARD STOKER, et al, Defendant- Appellant.	)	Case No. 18244

RESPONDENT'S BRIEF

Appeal from the Summary Judgment of the
Third Judicial District Court for Salt Lake County
Honorable G. Hal Taylor

DWIGHT L. KING
KING and PETERSON
2121 South State Street
Salt Lake City, Utah 84115

Attorney for Respondent

DAVID L. WILKINSON
Attorney General, State of Utah
Paul M. Tinker
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84101

TED CANNON
Salt Lake County Attorney
Randall L. Skeen
Deputy County Attorney
431 South 300 East, Suite 301
Salt Lake City, Utah 84111

Attorneys for Appellant State of Utah

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT
OF THE STATE OF UTAH

HEBER D. NELSON, et al, Plaintiff-Respondent, vs. RICHARD STOKER, et al, Defendant- Appellant.	Case No. 18244

RESPONDENT'S BRIEF

Appeal from the Summary Judgment of the
Third Judicial District Court for Salt Lake County
Honorable G. Hal Taylor

DWIGHT L. KING
KING and PETERSON
2121 South State Street
Salt Lake City, Utah 84115

Attorney for Respondent

DAVID L. WILKINSON
Attorney General, State of Utah
Paul M. Tinker
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84101

TED CANNON
Salt Lake County Attorney
Randall L. Skeen
Deputy County Attorney
431 South 300 East, Suite 301
Salt Lake City, Utah 84111

Attorneys for Appellant State of Utah

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

CASES CITED

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS (Cont.)

STATUTES CITED

TEXTS

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

HEBER D. NELSON, et al, Plaintiff-Respondent, vs. RICHARD STOKER, et al, Defendant-Appellant.	)	Case No. 18244

STATEMENT OF THE KIND OF CASE

Defendant, the State of Utah Department of Social Services and Patricia Kunz, is appealing from a judgment granting Plaintiffs' Motion for Summary Judgment, which judgment determined the priority of liens on certain real property located in Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

The District Court, Honorable G. Hal Taylor, determined the priority of liens giving first priority to a Trust Deed securing obligations owing to Western Mortgage Loan Corporation, giving second priority to the Plaintiffs' Trust Deed securing unpaid balance of purchase price, granting third priority to a judgment against Defendant Richard W. Stoker, granting fourth priority to Appellant State of Utah Department of Social Services and Patricia Kunz, and granting fifth priority to Tom Darnell and Diane Truscott, mortgagees. Only the Utah Department of Social Services and Patricia Kunz appeal.

RELIEF SOUGHT ON APPEAL

Appellants seek to have a priority granted the Utah Department

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

of Social Services and Patricia Kunz higher than awarded by the Court and prior to the second priority granted Respondents' purchase money Trust Deed.

STATEMENT OF FACTS

Plaintiff cannot accept the Statement of Facts as contained in the brief of Appellant as the Statement does not state the facts in the light most favorable to the decision made by the District Court.

The Court made Findings of Fact after the Motion for Summary Judgment was argued and presented in open court and all parties appeared before the court. Plaintiffs filed an Affidavit, which Affidavit was not contradicted by any party and which is supported by the documentary evidence examined by the Court at the time the Motion for Summary Judgment was heard.

The undisputed facts are that on or about the 4th of June, 1979, Plaintiffs and the Defendants Richard W. Stoker and LaNae S. Stoker entered into an agreement for the purchase by Defendants Stoker of all of Lot 11, Pioneer Estates No. 3 Subdivision, located in Salt Lake County. Plaintiffs deeded by Warranty Deed to the Stokers the property involved. This deed is shown by Exhibit 2-P which was presented to the court and is now in the file. At the same time, in payment of the purchase price, Stokers executed and delivered a Trust Deed, which is Exhibit 3-P, securing the unpaid purchase price of $8,464.76. The Warranty Deed and Trust Deed were recorded by McGhie Land Title at the same moment as shown by the filing stamp on the documents, i.e. 12:35 P.M. on June 5, 1979.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

The Warranty Deed was subject to a Western Mortgage Loan Corporation Trust Deed in the face amount of $40,700.00 executed by Plaintiffs. Stokers made no downpayment and only one monthly payment.

The Affidavit of Plaintiff states his opinion that the property value does not exceed the balance owing on the Western Morgage Loan Corporation loan and the unpaid balance owing Plaintiff on the purchase price represented by the Trust Deed, Exhibit 3-P.

On June 5, 1979 Defendant Richard W. Stoker was a judgment debtor owing a debt to Ray Quintana, dba Silver Way, in the amount of $1,038.17, costs of $13.80, and an attorney's fee of $350.00, item #8 on the foreclosure report, Exhibit 1. Judgment was dated January 13, 1977 and filed on the 14th of January, 1977.

There was also a judgment against Richard W. Stoker to the State of Utah Department of Social Services and Patricia Kunz in the amount of $21,610.00 dated February 23, 1979 and filed on March 16, 1979.

The Affidavit of Plaintiff further stated that he did not appreciate the significance of the judgments against his buyer at the time the Warranty Deed was given Stokers and the Trust Deed taken back to secure the purchase price, or he did not observe that these obligations were on the title report supplied to him by McGhie Land Title.

It is undisputed that the Appellant did not know of the transaction between the Plaintiffs and Defendants Stoker and did not have any interest in said transaction, nor did they give any consideration for an interest in the real property of Defendants

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Stoker. The Affidavit of Heber D. Nelson is pages 28 and 29 of the Record on Appeal.

The Court made Findings of Fact finding the items as recited herein that were undisputed and took into consideration the Affidavit, statement of counsel, foreclosure report on the real property, the Warranty Deed, and the Trust Deed that are described (R. 42-43), and found that none of the parties were aware of the transaction between the Plaintiffs and Defendant Stoker and that no party had relied upon there being a property interest in Stokers for extension of credit or in any other way which might have been detrimental to them.

Based on the Findings of Fact, the Court then determined that the priority of liens on Lot 11, Pioneer Estates No. 3 Subdivision, were as follows:

(1) Priority No. 1 was granted to the Trust Deed, face amount of $40,700.00, to Western Loan Mortgage Corporation, recorded March 20, 1978.

(2) It granted second priority to the Trust Deed to Plaintiffs for $8,464.76 securing the purchase price of the property agreed upon between Plaintiffs and Defendants Stoker.

(3) Third priority was granted to Ray Quintana, dba Silver Way, judgment.

(4) Fourth priority was granted to the State of Utah Department of Social Services and Patricia Kunz, Appellants, whose judgment is in the amount of $21,610.00.

(5) Fifth priority was granted to the Defendants Tom Darnell and Diane Truscott based on the mortgage recorded March 18, 1981.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

ARGUMENT

POINT I

NEITHER PARTY TO THE TRANSACTION BETWEEN PLAINTIFFS AND STOKERS EXPECTED THE APPELLANT TO OBTAIN AN INTEREST IN THE REAL PROPERTY WITH PRIORITY AHEAD OF PLAINTIFFS.

It is a fundamental principle of equity that no one shall be allowed to enrich himself unjustly at the expense of another by reason of an innocent mistake of law or fact. Appellant asks this Court to give it a priority over the Respondents by reason of the fact that Respondents and Stoker made a mistake of law or fact, or both, in placing title in Stoker after the judgment against him had been entered of record on behalf of Appellant. It is respectfully submitted that recognizing the position of Respondents can injure no one and deny to anyone rights that justice entitles them to.

The equity courts over the years have had difficulty relieving people from mistakes of law since the exact status of any particular legal principle is always difficult to ascertain. However, where the mistake, if it is a mistake of law rather than a fact, relates to a title situation, courts have universally held that a party may be relieved of the consequences of his mistake and granted equitable relief where no person is harmed by such a resolution. This Court, in the case of Sine v. Rudy, 27 Utah 2d 67, 493 P.2d 299, recognized that equity would relieve people from mistaken beliefs as to what the status or legal condition of property concerned in their transaction actually was.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

The texts seemed to be unanimous in concurring that equity jurisdiction gives the right to relieve against mistakes, especially where they are mutual on the part of parties to a transaction. See 30 C.J.S., §47, pg 868, etc., and 27 Am.Jur.2d, §28, pg 552.

There has been no doubt that the equity court had power to relieve parties from the consequence of mistakes of fact. Less clear has been the proposition that the court would relieve parties of the consequences of a mistake as to law. Many of the cases, however, contain both mistakes as to law and to fact, and in those cases the courts are able to relieve a party of the mistake where no one is harmed and a failure to relieve would cause unjust enrichment. 27 AmJur.2d, §28, pg 552 through §37, pg 560.

A great number of cases support the principle and illustrate the manner in which equity intervenes to do justice. One of the early cases which has been often quoted and cited as good law is Cherry v. Welsher, 195 Iowa 640, 192 N.W. 149 (1923). The rule recited fits the facts before the court in this case:

> "This record, however, shows a release of an unsatisfied incumbrance, and the lien so released will be revived for the benefit of the party satisfying it. Justice and equity require that this should be done. When a person through misapprehension and mistkake of the law parts with or surrenders a right of property which he would not have surrendered but for such misapprehension, a court of equity will grant relief, if it is satisfied that the parties benefited by the mistake cannot in conscience retain the benefits or advantages so acquired. Botorff v. Lewis, 121 Iowa 27, 95 N.W. 262; Kerr on Fraud and Mistake, pp. 398 and 418. A court of equity will not permit a party to take and enjoy the benefits of ignorance or mistake of law on the part of another party who knew and who did not correct. Faxom et al v. Baldwin, 136 Iowa, 519, 114 N.W. 40; 2 Pomeroy, eq.Jur. (3d Ed.) §§721, 847."

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

For similar ruling see also Prudential Insurance Company of America v. Nuernberger, et al, 135 Neb. 743, 284 N.W. 266. Cases which also accept the general proposition cited in Am.Jur. are Cooper County Bank v. Bank of Bunceton, 221 Mo. 814, 288 S.W. 95, where the Missouri Supreme Court stated the law in the following language:

> "The remaining point for our consideration is the question of rescission. It is plaintiff's contention that a contract entered into under a mutual misconception of the legal rights of the parties amounting to a mistake of law is as amenable to rescission as one founded in a mistake of fact. It is urged that, being an equity case, where an unconscionable advantage has been gained by a mere mistake or misapprehension, equity will interfere in order to prevent intolerable injustice."

See also the following cases: Norard Hosiery Mills, Inc. v. Orinoko Mills, 416 Penn. 454, 206 A.2d 56; Peter v. Peter, 343 Ill. 493, 175 N.E. 846; and Garrett v. Reid-Cashion Land & Cattle Co., 34 Ariz. 245, 270 P. 1044. The rule granting relief is set down in the following language:

> "The rule that permits relief to one who enters into a transaction ignorant of his antecedent existing legal rights is well recognized. It is stated by Pomeroy on Equity Jurisprudence (3d Ed.) §849, as follows:
>
> 'Wherever a person is ignorant or mistaken with respect to his own antecedent and existing private legal rights, interests, estates, duties, liabilities, or other relations either of property or contract, or personal status, and enters into some transaction the legal scope and operation of which he correctly apprehends and understands, for the purpose of affecting such assumed rights, interests, or relations, or of carrying out such assumed duties or liabilities, equity will grant its relief, defensive or affirmative, treating the mistake as analogous to, if not identical with, a mistake of fact.' "

See also Mitchell v. California-Pacific Title Ins. Co., et al, 248 P. 1035; Barkhausen, et al v. Continental Illinois Nat. Bank & Trust Co. of Chicago, 3 Ill.2d, 120 N.E.2d 649.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

In the case of S. S. Pierce Co. v. United States, 17 F.Supp. 667, the District Court stated the law and authority supporting the fundamental legal principle espoused by Respondent:

> "While it is often laid down as a general rule that equity will not relieve against a mistake of law, Bank of United States v. Daniel, 12 Pet. 32, 9 L.Ed. 989, the rule is no doubt subject to exceptions. One such exception arises where an instrument is given under a mistake as to the antecedent rights of the parties. In such cases, it is said that equity may give relief, although that mistake be the result of ignorance of the most fundamental legal principles. Williston on Contracts, §1589; Clifton Manufacturing Company v. United States (C.C.A.4th, 1935) 76 F.(2d) 577; Order of United Commercial Travelers of America v. McAdam (C.C.A.8th) 125 F. 358; Reggio v. Warren, 297 Mass. 525, 93 N.E. 805, 32 L.R.A. (N.S.) 340, 20 Ann. Cas. 1244; Renard v. Clink, 91 Mich. 1, 51 N.W. 692, 30 AmSt. Rep. 458. The present case probably falls within this exception. But a further qualification must be noted. The power to set aside an instrument because of mistake is based upon equitable principles, and is to be exercised only for the purpose of preventing unjust enrichment."

If the Court accepts the ruling by the trial judge, the end result will be that the State will get exactly what it had prior to the transaction between Plaintiffs and Stoker, the parties to the transaction will be given the exact items they had prior to the transaction, and no one will be unjustly enriched. To accept the proposition that the State can in some way obtain a lien on premises of Plaintiffs ahead of their second Trust Deed must be based on a doctrine that the State is entitled to be unjustly enriched when no other person can claim such rights.

POINT II

STOKER HAD NO PROPERTY ON WHICH THE LIEN FOR SUPPORT OF HIS CHILDREN COULD ATTACH.

The judicial Code provisions providing for support of minor children are clear in their provisions. Section 78-45b-1.1

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

clearly states that the resources of responsible parents are to be appropriated for support of the parents' minor children.

On February 23, 1979, the date of the judgment in favor of Appellant, Stoker had no interest whatsoever in the real property subject to the liens in question. Other than for a momentary existence, Stoker never had any interest in the real property in which the Appellant now seeks to have a oien for child support.

Respondents in no way are responsible for the support of Stoker's children and their property, under the Public Support of Children provisions, is not property that the State of Utah has ever claimed should be appropriated for the support of another's children. Appellant cites Section 78-45b-9 which provides for the docketing of the judgment for support provided by the State. Said provision states as follows:

> "When so filed and docketed the award shall constitute a lien from the time of such docketing upon the real and personal property of the obligor...."

Respondents submit that what the Appellant is attempting to do is to make the award a lien on property owned by Respondents since giving the lien of the State priority ahead of Respondents' recorded Trust Deed would take the property of Respondents to pay the debts of Defendant Stoker.

The decision of the trial court gives the State of Utah everything that the statutory provisions cited say it is entitled to. The basic equity rule that the trial court applied granted Respondents their property rights. The judgment prevented unjust enrichment of the State of Utah. Stoker never did have any substantial interest in the real property subject to the liens

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

on which priority was determined. The State is awarded everything Stoker ever had by the judgment.

CONCLUSION

It is respectfully submitted that the trial court's decision reached a fair and equitable resolution of the matter at issue. That this Court should affirm the trial court judgment.

RESPECTFULLY SUBMITTED this _____ day of June, 1982.

KING and PETERSON

DWIGHT L. KING
Attorney for Plaintiffs
and Respondents

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.