

1960

George O. Patterson and Edna Patterson v. Max Wilcox and Ben D. Browning : Appellants' Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Patterson v. Wilcox*, No. 9278 (Utah Supreme Court, 1960).
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IN THE SUPREME COURT
of the
STATE OF UTAH

GEORGE O. PATTERSON and
EDNA PATTERSON, his
wife,

Plaintiffs and Respondents,

vs.

MAX WILCOX and
BEN D. BROWNING,

Defendants and Appellants.

} Case No. 9278

APPELLANTS' REPLY BRIEF

A reply to respondents' brief is in order to dispel the erroneous and inconsistent arguments therein set forth.

STATEMENT OF POINTS

POINT I

THE QUIT CLAIM DEED IS CLEAR AND UNAMBIGUOUS AND CONVEYED OIL AND GAS TO APPELLANTS.

POINT II

THIS CASE IS AN EQUITABLE QUIET TITLE ACTION AND BOTH FACTS AND LAW MUST BE REVIEWED.

ARGUMENT

POINT I

THE QUIT CLAIM DEED IS CLEAR AND UNAMBIGUOUS AND CONVEYED OIL AND GAS TO APPELLANTS.

Where do respondents choose to make their stand?

In the Court's Findings of Fact, paragraph 7, (R. 75) the Court states:

“ . . . That from the face of said unrecorded quit claim deed itself, the use of the term “mineral rights”, it was intended to include only minerals and ores that were to be treated by mills . . . ”

These Findings were prepared by respondents at the direction of the court. The deed is not ambiguous the Court so found in its Findings.

Yet, respondents in their brief at page 36 state:

“The Trial Court had under consideration before it an “Agreement” and “Quit Claim Deed” which was on its face susceptible of more than one construction . . . ”

and they continually refer in their brief to matters extrinsic to the deed and rules of law applicable to ambiguous instruments.

The inconsistency is apparent. Respondents can not say on the one hand that the intent of the parties

is manifest from the deed and on the other say that the deed is ambiguous and the intent must be gathered from matters extrinsic to it.

Let us again examine the fundamentals of this case. Respondents assert that their grant of “all mineral rights” did not include oil and gas. It was their burden to prove that assertion. *Western Development vs. Nell*, 288 Pac. 2d 452 (Utah).

We are first referred to the testimony of respondent George Patterson (Tr. 13-17). Respondent Patterson merely testifies to the fact that the parties had some conversations and negotiations concerning uranium claims. His testimony clearly refers only to the unpatented claims which were in fact conveyed by the deed. Nowhere does he refer to the minerals under the 400 acres of patented ground, nor does he state what he intended to convey by his deed.

Furthermore, this testimony was objected to as violating the parol evidence rule (Tr. 14) and inasmuch as the court found the intent of the parties from the face of the deed, it is obvious that this evidence was not even considered by the lower court.

Respondents also argue for and rely upon the “grazing lease”. It is true that the validity of this lease was admitted. However, the lease was never offered in evidence and specifically, it was never offered by respondents for the purpose they now

claim for it, namely to show an interpretation on the part of all parties not to have conveyed oil and gas in a deed executed three and one-half years prior. Yet, it mysteriously became part of the Findings of the Court. The Court said in substance in its Findings that the validity of the lease was admitted and that the defendants, two of whom are appellants herein, thereby gave an "interpretation" to the quit claim deed to the effect that said deed did not include oil and gas. Had it been properly offered, an objection to its admission should have been sustained, particularly in view of the fact that the court did not find the deed ambiguous. Only if the deed were ambiguous and then only if it were a contemporaneous instrument, could this lease have a bearing on the intent of the parties. 16 Am Jur (Deeds) §175.

"It is a general rule of construction, well settled by the authorities, that in order to ascertain the intention of the parties, separate deeds or instruments, executed at the same time in relation to the same subject matter between the same parties or in other words made as parts of substantially one transaction, may be taken together and construed as one instrument."

First of all, three and one-half years separate the execution and delivery of the quit claim deed from the grazing lease.

Second, appellant Browning was not even a

party to the lease and there is no testimony whatever that he had any knowledge of its existence before this lawsuit was commenced. Yet, the Court found that by the lease he “interpreted” a deed as not conveying oil and gas. This is simply an unwarranted assumption by the lower court. Furthermore, even if the lease were properly before the Court, it does not aid respondents. Nothing in the lease disparages the grant contained in the deed (See page 11 of appellants’ brief for a discussion of the terms of the lease).

If this were an ambiguous deed (which it is not) and the extrinsic matters relied upon by respondents properly before the court —

“All the evidence introduced was equivocal in its meaning, and thus appellants have failed to prove by extrinsic evidence that the intention of the parties was other than to grant what is generally accepted as within the term “minerals’ ”. *Western Development v. Nell* (supra).

POINT II

THIS CASE IS AN EQUITABLE QUIET TITLE ACTION AND BOTH FACTS AND LAW MUST BE REVIEWED.

In this equitable quiet title action both law and facts must be reviewed and the weight and sufficiency of the evidence determined. *Reimann v. Baum*, 203 P. 2d 387 (Utah).

The application of that rule to this case means that the quit claim deed must be construed by this court, its meaning found from its terms and effect given to each of those terms. The deed granted "all mineral rights" a term which includes oil and gas and this term must be given effect. Clearly, appellant's title to the oil and gas underlying the 400 acres is good and valid and a new finding to that effect must be entered.

CONCLUSION

Respondents have abandoned the Findings of the lower court. They now say the deed is susceptible of more than one construction and choose to stand on extrinsic matters within and without the record to sustain their burden of proving that their grant of "all mineral rights" meant less than the clear meaning of the term.

These extrinsic matters are vague, indefinite and at most equivocal in meaning. Respondents did not sustain their burden of proof.

We are not thereby suggesting that a new trial for the purpose of adducing additional evidence should be granted. On the contrary, where, as here, the decree of the lower court is against the weight of the evidence, a new finding must be made by this court. *Randall vs. Tracy-Collins Trust Company*, 305 Pac. 2d 480 (Utah).

The quit claim deed conveyed "all mineral rights", including oil and gas, to appellants subject to respondents' ten (10%) percent royalty on metal-liferous ores.

Respectfully submitted,

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