

2002

Jamie Evans v. Board of County Commissioners of Utah County : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

JAMIE EVANS,

Plaintiff and Appellant,

vs.

THE BOARD OF COUNTY
COMMISSIONERS OF UTAH
COUNTY,

Defendant and Appellee.

Appellate Case No.: 20020689-CA

Trial Court Case No.: 960400821

APPEAL FROM A JULY 31, 2002, SUMMARY JUDGMENT ORDER IN THE
FOURTH DISTRICT COURT GRANTED BY THE HONORABLE FRED D.
HOWARD

BRIEF OF APPELLEE

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STATEMENT OF JURISDICTION

This Court has jurisdiction to consider this appeal under to Utah Code Annotated § 78-2-2(4) pursuant to an Order of the Utah Supreme Court dated October 4, 2002. This appeal was originally filed with the Utah Supreme Court under to Utah Code Annotated § 78-2-2(3)(j).

STATEMENT OF ISSUES

Defendant-Appellee Board of County Commissioners of Utah County (“Utah County” or “County”) generally accepts Evans’s statement of issues and that “[t]he ultimate determination of whether an easement exists is a conclusion of law,” subject to review under the correction of error standard. *Carrier v. Lindquist*, 2001 UT 105, ¶11, 37 P.2d 1112.

However, the existence of an easement is also a highly fact-dependent question; therefore, [appellate courts] accord the trial judge a measure of discretion when applying the correct legal standard to the facts, and overturn a ruling concerning the existence of an easement only if the judge exceeded the discretion granted.

Id.

STATEMENT OF THE CASE

Nature of Case, Course of Proceedings, and Disposition Below

Plaintiff-Appellant Jamie Evans purchased property used primarily for mining in Utah County, Utah, in 1996. The property borders a platted but undeveloped subdivision. (R. at 210, 212, 228-29, 255, 386, 415-16.) Evans brought this suit to challenge a Utah County ordinance that vacated three of the “paper streets” (streets that, although platted and dedicated, have never been developed or used) within the subdivision, claiming that, *inter alia*, the vacations destroyed potential access routes to his property. (R. at 9-17,

279, 476/62.) Evans contemporaneously sought to enforce a reservation included in a quit-claim deed of the prior owner that attempted to reserve a right of way through one of the platted streets (Pine Street) and over a 120-foot strip to the south for access, and to compel Utah County to build a gravel road within a fifty-six foot wide right of way across the 120-foot strip. (R. at 9-17, 206, 214, 216, 223-26, 241, 256-57, 278-79, 422-23.)

Evans filed a Complaint against Utah County approximately a month after the enactment of the vacating ordinance, on November 27, 1996, and an Amended Complaint on February 5, 1997, challenging the vacation ordinance, claiming deprivation of due process under 42 U.S.C. § 1983 and breach of contract, and seeking declaratory judgment recognizing the alleged easement the prior owner attempted to reserve. (R. at 1-17, 422.)

The trial court granted Utah County's motion for summary judgment in a ruling on July 1, 2002, entering an order dismissing Evans's suit with prejudice on July 31, 2002. (R. at 431-46, 449-63.) This appeal followed. Although Evans's Docketing Statement raised an issue regarding the trial court's dismissal of his challenge to the vacation ordinance, his brief ignores that issue, leaving only two issues related to his claim for a declaration recognizing his alleged easement for this Court's review. (Dock. Stmt. at 2-3.)

Facts

In February, 1926, Knight Investment Company ("Knight") recorded the Ironton Plat, mapping a planned subdivision of property located south of Provo, Utah, in Utah County. (R. at 279.) Knight included in the plat, and dedicated for public use, Harvard, Yale, Princeton, Walnut, Naples, Dupont, and Pine Streets as they appear on the map included in Appellee's Addendum ("Map"). (Aplee's Add. at A1.) These streets existed only on paper, and were drawn over terrain with steep average grades, ranging from eight

to eighteen percent (the average Pine Street grade was eighteen percent), sloping up from the west toward the east.¹ These grades would have been the same in 1983, when Bird quit-claimed lots within the Ironton Plat to Utah County. (R. at 258-59, 390-91, 417-19.) In 1935, Utah County and the Colorado Development Company conveyed land they owned near or within the Ironton Plat to the State of Utah to be included in the development of a newly aligned state highway, Highway 89, which appears as the “State Road” bounding the west side of the plat, its extension demonstrated on the Map by dash marks. (R. at 218, 279.) Access to Evans’s property from Highway 89 exists south of the Ironton Plat. (R. at 476/62.)

Nearly fifty years later, on July 9, 1983, the R.L. Bird Company (“Bird”) delivered a Quit-claim Deed (“1983 Deed”) to Utah County conveying lots it owned within the Ironton Plat to accommodate the County’s construction of a new public works building located between where Walnut and Naples Streets are platted on the Map. By that same instrument, the County also acquired a 120’ x 760’ strip of land on the southeastern boundary of the Ironton Plat. The lots conveyed appear on the Map in yellow, and the strip of land is outlined on the Map in green. (R. at 214, 216, 218, 241, 243, 257-59, 388-89, 420-21; Aplee’s Add. at A1-A2.) This land provided additional parking space and room for acceleration and deceleration lanes along realigned Highway 89, allowing the County to obtain a permit from the Utah Department of Transportation (UDOT) for a new access off the highway into the parking lot that services the public works building. (R. at 214, 216, 218, 241, 243, 257-59, 388-89, 420-21.) Utah County completed the public works facility, which included a building, a service station, and a parking lot, in January, 1986. To facilitate the improvements, a large amount of material was removed from the

¹ Evans disputed the relevance of these facts below, but not the correctness of the facts themselves.

hillside at the westerly end of where Walnut, Naples, Dupont, and Pine Streets were platted. (R. at 208, 255, 422; Aplee's Add. at A1.) Bird did not file a lawsuit challenging the 1986 regrading project. (R. at 390.)

The 1983 Deed also contained a reservation, drafted by Bird, providing as follows:

RESERVING to the grantor the public use and right-of-way over and into Pine Street from the State Highway and a 56' wide right-of-way over and across the last described parcel of land [the 120' x 760' strip referred to in the foregoing paragraph], from Pine Street to connect with the grantor's remaining property over which Utah County agrees to build a good gravel road within 90 days of the date of this instrument, to provide access to grantor's remaining land.

(Aplee's Add. at A2.) Evans has presented no evidence showing that the County assented to this easement. In fact, county commission minutes refer to the county engineer's statement that "this reservation was unilateral and never accepted by the County." (R. at 138.) As a result of the 1983 conveyance, Bird no longer owned land abutting Pine Street, which terminated on its west end in Highway 89 and on its east end in Bird's property. (Aplee's Add. at A1.) In 1983, there was no access onto Pine Street from Highway 89 due to the steepness of the Pine Street right of way and because the state had acquired the west end of Pine Street and adjoining properties as part of the Highway 89 realignment project, completed in 1979.² As of this date, UDOT has not approved any application for access to Highway 89 from Pine Street. (R. at 218, 243, 245, 247-48, 250-51, 257-59, 391, 417-20.)

The road mentioned in the reservation was never built, the stated right of way never used, nor were any of the platted streets opened, used, or improved, except for Yale

² Utah County development standards limit the slope of roads to eight percent. (R. at 250-51, 258-59, 390-91, 417-19.)

Street, which the county maintained, but did not open. An unimproved road was developed approximately seventy-five feet east of the platted position of Columbia Avenue. (R. at 212, 231, 233, 235-36, 238-39, 250-51, 255-56, 258-59, 387-88, 391, 416-19, 476/45 & /46; Aplee's Add. at A1.)

On November 27, 1995, Bird conveyed a portion of its property to Jamie D. Evans and Terry D. Evans.³ The property conveyed is generally located south and east of the Ironton Plat and outside where Pine Street is platted, and is indicated by the area filled with red diagonal lines on the Map. (R. at 210, 212, 228-29, 255, 386, 415-16; Aplee's Add. at A1.)⁴

Approximately a year later, on October 29, 1996, Utah County vacated by ordinance portions of the Ironton Plat, including Walnut, Naples, and Dupont Streets. Pine Street was not vacated. (R. at 206, 210, 220-21, 223-26, 254-55, 385, 414-15, 423.)

SUMMARY OF ARGUMENTS

The trial court properly held that the reservation of easement made by Bird in the 1983 deed is unenforceable. Bird's reservation of a private easement in that document fails for at least three reasons. First, because Pine Street only existed on paper at the time Bird made his reservation, he had no private easement over the street and therefore could

³ The trial court found that Terry Evans was an indispensable party to this action, and the parties stipulated at the oral argument on the County's motion for summary judgment that Evans would amend his Amended Complaint to include her as a plaintiff. (R. at 476/4.) Evans has not done so. Utah County assumes that Evans's failure to do so is merely an oversight, and proceeds under the belief that the Court's determination of this appeal will apply with equal force to both Jamie and Terry Evans. If it will not, Utah County requests the Court dismiss this appeal for Evans's failure to join an indispensable party, contrary to his stipulation before the trial court.

⁴ The county engineer, disputing Evans's contrary statement, again reexamined the Ironton Plat and reaffirmed his prior conclusion that the property Bird conveyed to Evans lies entirely outside the Pine Street right of way. (R. at 386.)

not reserve it. Second, Bird's reservation violates the Statute of Frauds because it fails to sufficiently describe the easement. Finally, the language of the easement was too vague to allow the trial court to fix its location.

ARGUMENTS

I. THE TRIAL COURT CORRECTLY HELD THAT NO PRIVATE EASEMENT EXISTED FOR EVANS'S PREDECESSOR TO RESERVE.

Evans disputes the trial court's holding that "the Supreme Court of Utah has established that private easements over public ways are created only when those public ways physically existed at the time the landowner acquired the property." (Aplt's Add. at 12.) Evans's sole argument against the trial court's decision is that it misapprehended *Carrier v. Lindquist*, 2001 UT 105, 37 P.3d 1112, which, he argues, instead held that a public way need only appear on a map for abutting owners to acquire a private easement right over it. (Aplt's Br. at 8-10.) Evans construes *Carrier* too narrowly.

While Evans does not dispute that "a grantee may receive only what a grantor has to give," *Wood v. Ashby*, 253 P.2d 351, 353 (Utah 1952), he contends that Bird possessed a private easement over Pine Street under his interpretation of *Carrier*. Thus, he argues, because "Utah law clearly provides that private rights of way and easements over a public way shall not be impaired when that way is vacated by the governing body," *Carrier*, 2001 UT 105, ¶23, 37 P.3d 1112, a point Utah County does not dispute, the private easement Bird reserved still exists. (Aplt's Br. at 8-10.) But a closer reading of *Carrier* demonstrates that a street's physical existence is a threshold determination when deciding whether a private easement has been created.

In *Carrier*, it was undisputed that the alley at issue existed both physically and on a plat map. *See id.* at ¶¶2-8. One of the questions the case presented was whether the plaintiffs, who purchased their property after the street was improperly vacated, could

claim a private easement over the street by asserting reliance on the street's appearance on the plat map when they purchased their property. *See id.* at ¶¶9-10. The court determined they could, and Evans cites from that part of the decision for support. *See id.* at ¶¶12-15; (Aplt's Br. at 9).

The defendants in *Carrier* responded to that argument by contending that, based on *Tuttle v. Sowadzki*, 126 P. 959 (Utah 1912), the plat map's erroneous description of the alley as vacated when the plaintiffs purchased their property precluded their ability to rely on the map to subsequently claim an easement over the alley. In *Tuttle*, the plaintiffs sought, but were denied, recognition of a private easement over a public street that appeared on a plat map, but had been statutorily abandoned by the time they purchased their abutting property. *See Tuttle, passim*. The supreme court distinguished *Tuttle* from the facts presented by *Carrier*:

the avenue in *Tuttle* had been fenced off and landscaped and did not exist as a road at the time plaintiff purchased his property. In fact, the avenue had never been used as a public highway and had been vacated and legally abandoned for over ten years. In this case, by contrast, the alley had been open for public use for over a hundred years and had not been legally vacated at the time plaintiffs purchased their homes. At the time of defendants' purchase, and up until defendants obstructed the alley, plaintiffs openly and consistently used the alley to access their properties.

Carrier, 2001 UT 105, ¶15, 37 P.3d 1112 (citations omitted) (emphases added). In other words, although the plat map informed the plaintiffs that the alley had been vacated, the fact that the alley existed and was used as an alley allowed them to assert their claim. In the instant case, although the plat map depicts Pine Street, it is undisputed that it has never been opened, used, nor developed, and that it has been partially excavated and paved as a parking lot. (R. at 138, 259, 277-78, 391, 416-20, 476/45 & /46.) Thus Evans is precluded from now asserting an easement over it.

Evans's interpretation of *Carrier* would also contradict longstanding Utah law, much of which the supreme court relied upon in *Carrier*. See, e.g., *Mason v. Utah*, 656 P.2d 465, 468 (Utah 1982) (“[A]n abutting landowner has a private easement of ingress and egress to existing public highways.” (emphasis added)); *Tuttle*, 126 P. at 963 (“So far, the matter is clear enough that the right of the abutting owner is based upon something that is tangible, and which exists at the time he purchased the property.” (emphasis added)).

Therefore, because Bird did not have a private easement in Pine Street, it could not reserve a right that it did not own, and could not convey that nonexistent right to Evans.

II. THE TRIAL COURT CORRECTLY HELD THAT THE RESERVATION VIOLATED THE STATUTE OF FRAUDS.

The trial court agreed with Utah County that Bird's reservation of the alleged easement failed to comply with the Statute of Frauds because it was too vague. (Aplt's Add. at 13-14.) Evans argues on appeal that the trial court erred because the decisions it relied on, *Potter v. Chadaz*, 1999 UT App 95, 977 P.2d 533, and *Southland Corp. v. Potter*, 760 P.2d 320 (Utah 1988), are distinguishable. (Aplt's Br. at 7-8.)

“[A]n easement is an interest in land within the meaning of the statute of frauds....” *Warburton v. Virginia Beach Fed. Sav. & Loan Ass'n*, 899 P.2d 779, 781 (Utah Ct. App. 1995). As such, “[a] binding contract can exist only where there has been mutual assent by the parties manifesting their intention to be bound by its terms.” *Southland*, 760 P.2d at 322. “One of the factors to consider in ascertaining the intent of the parties to an agreement purportedly transferring real property is whether the document sufficiently describes the interest granted ‘in a manner sufficient to construe the instruments as a conveyance of an interest in land.’” *Warburton*, 899 P.2d at 781 (quoting *Wasatch Mines Co. v. Hopkinson*, 465 P.2d 1007, 1010 (Utah 1970)). A

sufficient description is composed of four parts: “(1) the grantor, (2) the grantee, (3) the interest granted, and (4) the property boundaries.” *Id.* at 782 n.4.

Bird’s reservation consists of three parts: (1) it reserves “public use and right-of-way over and into Pine Street from the state highway”;⁵ (2) it reserves “a fifty-six foot wide right-of-way over and across” the property transferred from Bird to Utah County “from Pine Street to connect with the grantor’s remaining property”; and (3) it purports to contract that Utah County will “build a good gravel road within ninety days.” (Aplee’s Add. at A2.) Although the description of the alleged easement includes its width and purpose, it does not, as Evans concedes, fix its location. (Aplt’s Br. at 4.) This omission violates the requirements of the Statute of Frauds.

In *Potter*, this Court voided a similar alleged express easement. The easement at issue in *Potter* was a reservation made in a conveyance “‘Subject To A Right-Of-Way Over The East 66 Feet Of Said Property, For The Purpose Of A Proposed Road.’” *Potter*, 1999 UT App 95, ¶10, 977 P.2d 533. Thus, like the instant easement, the easement at issue in *Potter* described its purpose and the general area of its location. The court, however, held that, “[a]lthough it appears the parties intended to create an express easement, the language in the deed is not sufficiently detailed. In fact, it does not specify the boundaries of the easement or its exact location. This vague language does not constitute a definite and ascertainable description of the property.” *Id.* at ¶11.

⁵ Apart from the vagaries associated with the alleged easement’s description, the language Bird used to describe the type of easement he attempted to reserve is also unclear. To the extent Bird’s reservation of a “public use and right-of-way” attempts to reserve an alleged public easement over Pine Street, it is either improper or nonjusticiable. First, Bird could not reserve something for itself that was owned by the public. Second, if a public easement had arisen in Pine Street, it still exists. Because the language conjoins “public use” with an undefined “right-of-way,” Utah County assumed for the purposes of its argument below that the latter term was asserting a private easement. (R. at 398).

Evans responds to this language by arguing that, unlike the alleged easement in *Potter*, the easement he alleges has specific boundaries and allows for its exact location to be fixed. (Aplt's Br. at 7.) The minimal distinctions between the easement at issue in *Potter* and the easement alleged in this case do not cure the latter's defects. While Bird's reservation, unlike the *Potter* easement, specifies the width of the road to be built, it does not specify its length, a specification the *Potter* easement satisfied. Thus, far from being more specific than the *Potter* easement, Bird's easement is just as, if not more, vague. At least the *Potter* easement made some attempt to limit its width by describing it as a road; Bird's easement could conceivably traverse the length, as well as the width, of the transferred property.⁶

To illustrate, the parcel Evans claims a right to cross under the Bird reservation is 760 feet long and 120 feet wide. The unopened Pine Street right of way runs parallel to the entire length of this parcel. (Aplee's Add. at A1.) Thus, under Evans's interpretation of the reservation, he could assert a fifty-six-foot wide easement across any point over its entire 760-foot length. Under that theory, Evans could assert literally scores of different crossing points.

Evans also contends that *Potter* is inapposite because the court "hung its ruling on the principle that a grantor may reserve an interest to itself, but not to a third party." (Aplt's Br. at 7.) While that was an issue in *Potter*, the court treated it separately from the sufficiency of the easement's description under the Statute of Frauds. After finding the conveyance insufficient as noted above, the court continued in *Potter*: "However, even if we were to assume that this language were sufficient to create an express easement, Utah

⁶ Unlike the parties in *Potter*, Utah County disputes that it ever intended to create the easement Bird attempted to reserve. (R. at 138, 259, 277-78, 391, 416-20, 476/45 & /46.) However, for the limited purposes of its argument below and on this appeal, it has assumed the easement was mutually approved.

law prohibits parties from expressly creating an easement in a land transaction for the benefit of a third party who is not involved in the transaction.” *Potter*, 1999 UT App 95, ¶12, 977 P.2d 533 (emphasis added). Thus, the court first found the conveyance’s description of the easement insufficient, and then, on separate grounds, found that the easement was also prohibited because it created a benefit for a third party.

Therefore, because the easement here merely describes “a fifty-six foot wide right-of-way” between Pine Street and Bird’s remaining property, and provides no description of the length of the easement or at what point it would cross over and impact the County’s land, it lacks a sufficient description of the easement and is therefore void under the Statute of Frauds. *See* 25 Am. Jur. 2d *Easements and Licenses* § 22 (1996) (“If the language of the instrument, in light of all the facts and circumstances referred to in the instrument, is so ambiguous that the court is unable to discern the intention of the parties, then the grant will be void and ineffectual.” (footnote omitted)).

III. THE TRIAL COURT CORRECTLY REFUSED TO FIX THE EASEMENT’S LOCATION.

Evans argues, based on two 1953 decisions, *Wood v. Ashby*, 253 P.2d 351 (Utah 1953), and *Salt Lake City v. J.B. & R.E. Walker, Inc.*, 253 P.2d 365 (Utah 1953), that the trial court should have, instead of distinguishing the two cases, used them to support a decision to fix the alleged easement’s location. (Aplt’s Br. at 4-7.) The distinctions between those cases and the issue presented here are, however, significant and substantive.

There is no indication in either *Wood* or *Walker, Inc.* that the Statute of Frauds defense was ever raised. Indeed, there was no reason to raise it in either case because the existence of the easement was undisputed. In both cases, some physical improvement denoted the easement’s existence (in *Wood*, it was a gate; in *Walker, Inc.*, a water

conduit). The issue in each case was the easement's extent. The question presented in *Wood* was whether a right of way was general or restricted, and, if the latter, where it should be located. See *Wood*, 253 P.2d at 353. In *Walker, Inc.*, the question was the width of a secondary floating or roving easement accompanying a water conduit. See *Walker, Inc.*, 253 P.2d at 368-69.

In *Wood*, a fence and gate allowed ingress and egress between the servient and dominant parcels. The court found that the fence and gate were “a practical construction of the deed by the parties” based on established use. See *Wood*, 253 P.2d at 352-54. In the present case, there is no physical improvement, no established use, and no construction of the easement by the parties. (R. at 138, 259, 277-78, 391, 416-20, 476/45 & /46.)

Evans compares Bird's reserved easement to the floating or roving easement at issue in *Walker, Inc.*, asserting that the trial court should have located the easement on the western end of Pine Street, next to Highway 89 to avoid annulling or ruining “the grant to the Evans [sic].” (Aplt's Br. at 5-7.) The easement at issue in this case is not a floating or roving easement. Floating easements “are fixed and determined by the extents and limitations required for the proper use and enjoyment of the easement.” *Walker, Inc.*, 253 P.2d at 369. Accordingly, the easement language itself usually identifies the easement's purpose, and makes no attempt to describe its boundaries. In *Flying Diamond Oil Corp. v. Newton Sheep Co.*, 776 P.2d 618 (Utah 1989), the agreement at issue granted

“the easements and rights to enter upon the described premises and to drill, construct, maintain and use upon, within, and over said premises all oil wells, gas wells, derricks, machinery, tanks, drips, boilers, engines, pipe, power and telephone lines, roadways, water wells ... and all other structures, [or] equipment ... necessary or convenient in prospecting and developing for, producing, storing, transporting, and marketing oil, gas, and associated liquid hydrocarbon substances under or produced from any portion of the described premises”

Id. at 620 (quoting the agreement at issue). The court identified these easements as floating, and explained that floating easements

are subject to definition by such unpredictable circumstances as the locations of wells, density of well locations, storage facilities, roads to well sites, and pipelines. The easements come into being as they become “necessary and convenient” for the activities of prospecting for and producing, oil, gas, and liquid hydrocarbons which are under the surface of the land in question

Id. at 626.

The easement at issue in *Walker, Inc.* was similarly **undefined**, granting

“a right of way and easement for all reservoirs, dams, ditches, conduits, pole lines and appliances and utilities connected therewith *to be constructed by the City wherever there may be located now or hereafter* within lands owned by” the grantor in Section 25, T.2S., R.1E., S.L.M. (Italics ours)

Walker, Inc., 253 P.2d at 368 (quoting grant at issue). The court described this easement as “a ‘roving easement,’” that, “by the nature of the grant creating it had such width as was reasonably necessary for the construction, use, repair, maintenance, replacement and reasonable enjoyment of the conduit.” *Id.* at 369.

Bird’s reserved easement does not approach these floating or roving descriptions. The purpose of the easement at issue in this case is not dependant on unpredictable circumstances like where oil deposits might be discovered or where the County locates a water conduit. Instead, it is an attempted express easement that insufficiently describes the boundaries and location of a single road “to provide access to grantor’s remaining land.” (Aplee’s Add. at A2.)

Evans’s assertion that “the clear intent of the parties and the most practical construction of the deed” required the trial court to locate the easement “from the edge of the state highway east onto Pine Street for 56 feet to the eastern boundary of the

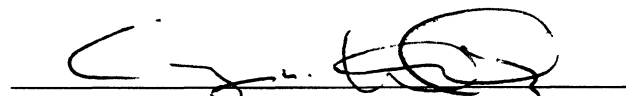
easement, then in a 56 foot strip south to Evans' property" is entirely without support. (Aplt's Br. at 6.) Evans has presented no evidence that Utah County even agreed to the easement, let alone intended to locate it fifty-six feet into Pine Street. Indeed, the county engineer's position at a public meeting was that the reservation was unilateral and had not been accepted by the County. (R. at 138.) Due to the prohibitive slopes that existed at the time Bird made the reservation, Utah County contends the only place it could have located the easement was along the unmaintained gravel road that crosses Pine Street approximately seventy-five feet east of the plat alignment of Columbia Avenue. (R. at 212, 231, 233, 250-51, 255-56, 387-88, 416-17.) At the very least, Evans's interpretation demonstrates, like the easement's failure to sufficiently describe the easement, that there never has been mutual assent between the parties regarding the easement's location.

CONCLUSION

For the foregoing reasons, Judge Howard's decision finding Bird's attempted reservation of a private easement over Pine Street unenforceable because the easement never existed, the easement violated of the Statute of Frauds, and was too vague to allow him to fix its position should be upheld.

DATED this 16th day of June, 2003.

CHRISTENSEN & JENSEN, P.C.

Handwritten signatures of Craig V. Wentz and Barton H. Kunz II, written over a horizontal line.

Craig V. Wentz

Barton H. Kunz II

Attorneys for Defendant-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2003, two true and correct copies of the foregoing **BRIEF OF APPELLEE** were sent via postage prepaid, first class U.S. mail to:

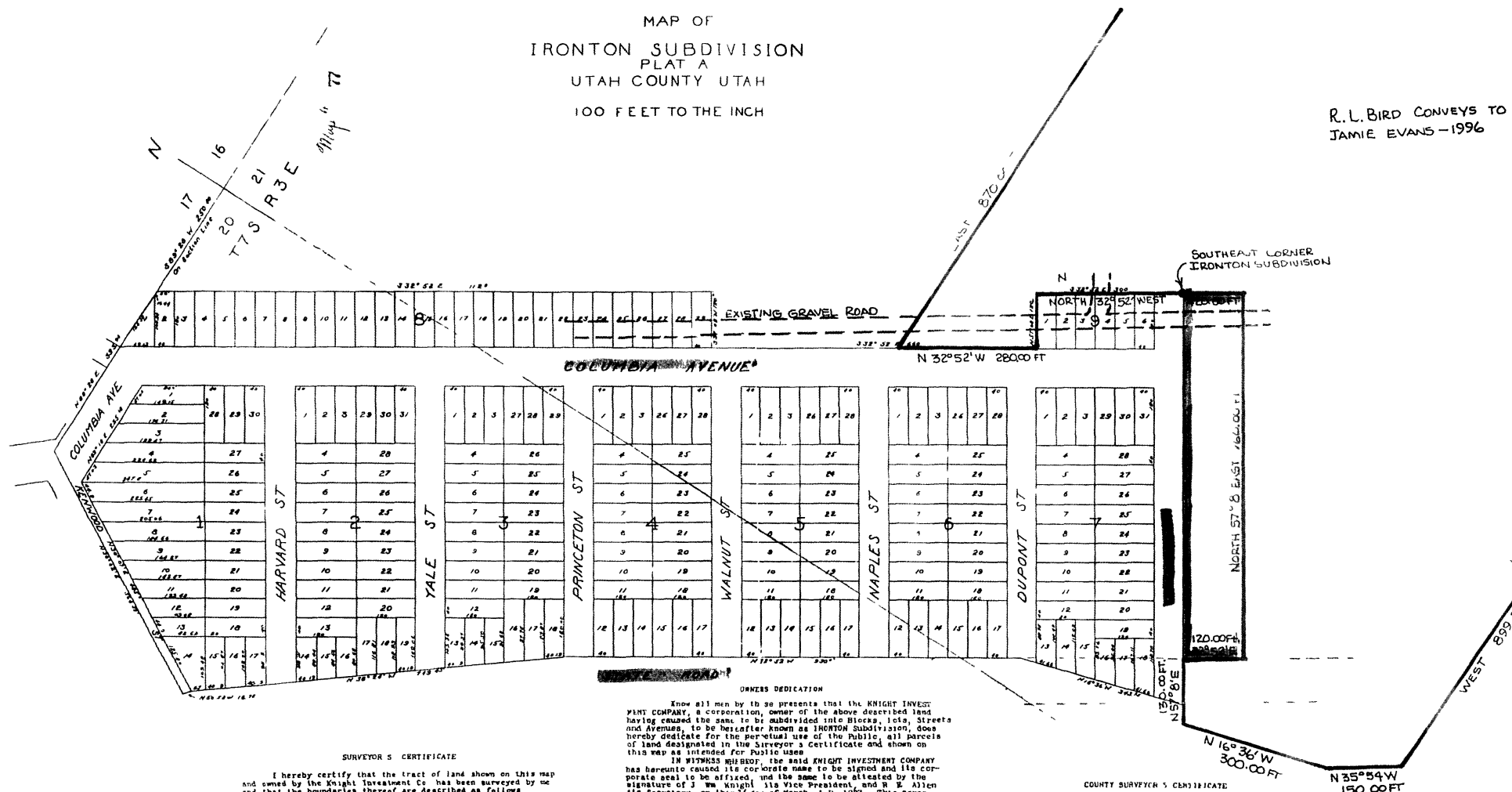
Samuel D. McVey
KIRTON & McCONKIE
60 East South Temple #1800
Salt Lake City, UT 84111
Attorneys for Plaintiff-Appellant

By: _____

Jason H. Plant

MAP OF
IRONTON SUBDIVISION
PLAT A
UTAH COUNTY UTAH
100 FEET TO THE INCH

R.L. BIRD CONVEYS TO
JAMIE EVANS - 1996



SURVEYOR'S CERTIFICATE

I hereby certify that the tract of land shown on this map and owned by the Knight Investment Co. has been surveyed by me and that the boundaries thereof are described as follows:

Beginning at a point S 69° 26' W 250.40 Ft from the North East Corner of Section 20 T 7 S R 5 E S 1 M
Thence S 32° 52' E 1112.0 Ft
Thence S 57° 08' W 120.0 Ft
Thence S 32° 52' E 660.0 Ft
Thence N 57° 08' E 120.0 Ft
Thence S 32° 52' E 300.0 Ft
Thence S 57° 08' W 606.25 Ft
Thence N 64° 36' W 345.75 Ft
Thence N 52° 52' W 830.0 Ft
Thence N 56° 24' W 749.45 Ft
Thence N 50° 52' W 16.75 Ft
Thence N 30° 02' E 54.32 Ft
Thence N 69° 26' E 393.94 Ft to point of beginning
Area 36.65 Acres

That I have by the authority of said owners thereof subdivided the same into blocks, lots, streets and avenues to be known as IRONTON Subdivision, that the same has been correctly surveyed and established on the ground by the placing of iron pins, one foot long by 5/16 inches in diameter, at the block corners.

NAMES AND DIMENSIONS OF PARCELS OF LAND DESIGNATED FOR PUBLIC USE

COLUMBIA AVENUE, 80 ft wide to 2372 ft long
KENWOOD ST 18 ft wide to 520 ft long
HARVARD ST 60 ft wide to 815 ft long
YALE ST 60 ft wide to 566 ft long
PRINCETON ST 60 ft wide to 560 ft long
WALNUT ST 60 ft wide to 560 ft long
NAPLES ST 60 ft wide to 560 ft long
DUPONT ST 60 ft wide to 560 ft long
PINE ST 60 ft wide to 850 ft long

C. B. Jennings
SURVEYOR

OWNERS DEDICATION

Know all men by these presents that the KNIGHT INVESTMENT COMPANY, a corporation, owner of the above described land having caused the same to be subdivided into blocks, lots, streets and avenues, to be hereafter known as IRONTON Subdivision, does hereby dedicate for the perpetual use of the public, all parcels of land designated in the Surveyor's Certificate and shown on this map as intended for public use.

IN WITNESS WHEREOF, the said KNIGHT INVESTMENT COMPANY has hereunto caused its corporate name to be signed and its corporate seal to be affixed, and the same to be attested by the signature of J. W. Knight, its Vice President, and R. E. Allen, its Secretary, on this 26 day of March, A.D. 1923. This agreement is executed by said company and by said officers by virtue of a resolution duly passed by its directors on the 26 day of March, A.D. 1923.

The KNIGHT INVESTMENT COMPANY

J. W. Knight
its Vice President

R. E. Allen
its Secretary

WITNESSES

ACKNOWLEDGEMENT BEFORE NOTARY PUBLIC

State of Utah
County of Utah

On the 26 day of March, A.D. 1923, personally appeared before me J. W. Knight, who being by me duly sworn, did say that he is the Vice President of the Knight Investment Company, a corporation organized and existing under the laws of the State of Utah, that said instrument was signed in behalf of said corporation by the authority of a resolution of its board of directors, enacted on the 26 day of March, A.D. 1923 and the said J. W. Knight acknowledged to me that said corporation executed this instrument.

My commission expires
Feb 4 1926

C. B. Jennings
Notary Public

COUNTY SURVEYOR'S CERTIFICATE

I hereby certify that I have examined and checked the dimensions given on this map and found the same to be correct.

C. B. Jennings
COUNTY SURVEYOR

Approved by the Board of County Commissioners
this 26 day of March, A.D. 1923

J. W. Knight
R. E. Allen
C. B. Jennings

EXHIBIT
A-5

QUIT-CLAIM DEED

R. L. BIRD COMPANY, a corporation organized and existing under the laws of the State of Utah with its principal office at Salt Lake City, Salt Lake County, State of Utah, grantor, hereby QUIT CLAIMS to UTAH COUNTY, State of Utah, grantee, for the sum of Ten Dollars and other good and valuable consideration, the following tracts of land in Utah County, State of Utah ;

10 20570-83
017 All of lots 13, 14, 17, and 18 in Block 6 of the Ironton Subdivision Plat A.

117 20590-83 All of lots 11, 12, 19, 20 and 21 and the fractional parts of lots 13, 14, 15, 16, 17, and 18 belonging to the grantor in Block 7 of the Ironton Subdivision Plat A.

107 ALSO; Beginning at the Southeast corner of the Ironton Subdivision Plat A, which point is at the east end of the south line of Pine Street, running thence South 32 Deg. 52. Min East 120 feet; thence South 57 Deg. 08 Min. West 760 feet to State Highway; thence North 32 Deg. 52 Min. West along said highway 120 feet to South line of Pine Street; thence North 57 Deg. 08 Min. East 760 feet to point of beginning.

RESERVING to the grantor the public use and right-of-way over and into Pine Street from the State Highway and a 56 foot wide right-of-way over and across the last described parcel of land, from Pine Street to connect with the grantor's remaining property over which Utah County agrees to build a good gravel road within 90 days of the date of this instrument, to provide access to grantor's remaining land.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

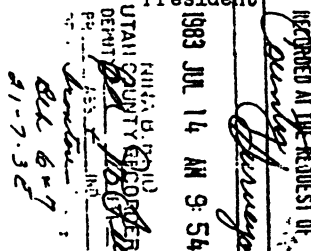
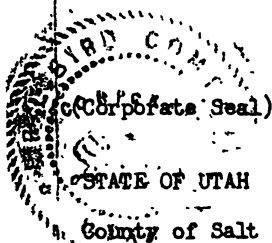
In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 7th day of July A.D. 1983.

Attest:

R. L. BIRD COMPANY

M. A. Bird
Secretary

By Dorothy B. Hart
President



20921

On the 7th day of July, A.D. 1983 personally appeared before me Dorothy B. Hart and M. A. Bird who being by me duly sworn did say, each for himself, that she the said Dorothy B. Hart is the president, and he, the said M. A. Bird is the secretary of the R. L. Bird Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Dorothy B. Hart and M. A. Bird each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Justin M. Parkin
Notary Public

My commission expires October 28, 1985

Residing at Salt Lake City, Utah

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