1962

Bela Mae Spratling Parr et al v. Zions First National Bank et al : Brief of Respondents

Utah Supreme Court

Gustin, Richards & Mattsson; Attorneys for Appellants;
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IN THE SUPREME COURT OF THE STATE OF UTAH

RELA MAE SPRATLING PARR, DOROTHY DEANE SPRATLING LOVE, CAROL BETH SPRATLING HENSON, and COLEEN SPRATLING HALL, formerly COLEEN SPRATLING,

Plaintiffs-Respondents,

— vs. —

ZIONS FIRST NATIONAL BANK, a corporation, successor to Utah Savings & Trust Company, a corporation, administrator of the estate of George Albert Steadman, deceased, also known as George A. Steadman, and ELVINA S. STEADMAN,

Defendants,

EDITH STEADMAN GREEN and SHELDON STEADMAN,

Intervenors-Appellants.

Case No. 9668

RESPONDENTS' BRIEF

Appeal From the Judgment of the Third District Court for Salt Lake County, Hon. Stewart M. Hanson, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATEMENT OF FACTS

Respondents agree with the statement of facts of appellants as stated with the following additions:

1. Affidavit of Leonard R. Steadman as to the partnership ownership of the property here involved. (p. 7 of Exhibit 1.)

2. Deed of January 5, 1945, of Leonard R. Steadman, Charles E. Steadman and William H. Steadman together with their wives transferring the property to William Parley Spratling and Amelia Daisy Spratling, his wife, said grantors being all of the others referred to in the partnership interest. (p. 22, Exhibit 1.)

3. That the property in question was never inventoried as an asset of the George Albert Steadman estate nor the guardianship estate of the intervenors, nor particularly described in any decree in said matters.

4. That Zions First National Bank, a corporation, successor to Utah Savings and Trust Company, a corporation, administrator of the estate of George Albert Steadman, deceased, was still the administrator of said estate as of the date of commencement of this action.

ARGUMENT

POINT I.

THAT GEORGE ALBERT STEADMAN NEVER DID OWN ANY INTEREST IN THE PROPERTY BY WHICH INTERVENORS-APPELLANTS COULD INHERIT AN INTEREST.

The affidavit of Leonard R. Steadman (p. 7 of Exhibit 1) states that the property in question was owned by a partnership of Walter Steadman and three of his sons other than George Albert Steadman through whom the intervenors-appellants claim to inherit. It thus fol-

lows that if George Albert Steadman was not a member of the partnership he had no ownership interest in the property in question.

Point II.

IN THE EVENT GEORGE ALBERT STEADMAN DID OWN AN INHERITABLE INTEREST THE STATUTE OF LIMITATIONS WILL RUN AGAINST A MINOR WHERE THERE IS AN ADMINISTRATOR AND A GUARDIAN REGULARLY APPOINTED FOR A MINOR AND THEREBY EXCLUDE THE MINOR FROM HIS RIGHT TO A CAUSE OF ACTION OR DEFENSE TO ONE AS AGAINST A STRANGER.

The Probate Court expressly reserved jurisdiction in the George Albert Steadman estate by the final decree as follows: (R. 43)

> "3. * * * That the estate shall not now be closed but remains open and the appointment of said administrator continues in full force and effect until further order, the court hereby retaining and continuing its jurisdiction herein."

The Zions First National Bank, a corporation, successor to Utah Savings & Trust Company, a corporation, was still the administrator of the estate of George Albert Steadman, deceased, as of the date of the commencement of this action.

The Utah Savings & Trust Company, a corporation, was appointed guardian of the appellants on December

23, 1942, and were discharged as such guardian on September 11, 1957.

Appellants argue the case of *Robbins* v. *Duggins,* 61 Utah 542, 216 Pac. 232. It is easy to distinguish this case as the property of the decedent was inventoried and appraised and distributed as an asset of the estate to the minor heir. In this case Justice Cherry stated at page 544 of 61 Utah as follows:

> "No guardian was ever appointed for plaintiff and he attained his legal age of majority on November 29, 1920, and said action was commenced within two years thereafter."

The writer of this brief agrees with the aforesaid case as there had been an unquestioned distribution of inventoried assets to an heir and no guardian was appointed while the heir was yet a minor, and therefore the statute of limitations did not start to run during the period of disability.

Respondents stipulate that the disability statute of the State of Utah in Utah Code Annotated, 1953, being 78-12-21 DISABILITIES ENUMERATED as set forth in appellants' brief is correct.

The question here involved is not new to the adjudications of this Court as is set forth in the following decisions:

In the case of *Jenkins* v. *Jensen, et al.,* 24 Utah 108; 66 P. 773, Chief Justice Miner at page 129 of 24 Utah said:

"In his inventory to the court in 1887 the administrator left out lots 1 and 16 and did not claim them as belonging to the estate, and in his petition for distribution of the real estate these lots were left out of the schedule. In the guardianship papers of the plaintiff the guardian, who is the mother of the plaintiff, claims she was entitled to 1/3 of the income of the farm in accordance with the agreement in 1881, which claim was inconsistent with the agreement of 1880. Since 1881 the administrator and guardian have acted under the agreement of 1881 and have practically ignored that of 1880. * * * At this time Thomas and Ann Jenkins were holding possession of the land adversely and the statute of limitations commenced to run. When the agreement of 1880 was made, these parties were in possession. * * * The administrator or trustee having the right to commence suit for the recovery of the property within the time limited by the statute, and having omitted to do so, he is barred from commencing such action against the respondents who are strangers to the estate; and his beneficiary is also barred, and his only remedy, if any, would be against the administrator and his sureties. Whether such liability now exists we do not decide."

The aforesaid case is followed by the case of *Dignan, et al.,* v. *Nelson, et al.,* 26 Utah 186; 72 Pac. 936.

This is an action in ejectment instituted August 30, 1899, by the heirs of Dominick Dignan, deceased, to recover possession of lots 9 to 13, inclusive, block 6, in Park City, Utah. The plaintiffs, Dominick T. and Joseph L. Dignan, were minors aged, respectively, 20 and 18 years

when this suit was brought. Emma McGill is the widow of Dominick Dignan and guardian of the minors. The defendants, Eliza and Lila S. Nelson, are the widow and daughter, respectively, of John A. Nelson, deceased, and the firm of Pickett and Greeg were their tenants, all in possession of the property. The complaint alleges that plaintiffs are the owner in common in fee and entitled to the possession of the property and that the defendants are in possession, and are unlawfully withholding the same from the plaintiffs. The answer denies these allegations and sets up three affirmative defenses, one of which is that the plaintiffs are barred by the statute of limitations.

The decisive question on this appeal then is are the plaintiffs barred by the statute of limitations.

J. Bartch, writing the opinion in this case, said at page 191 of 26 Utah:

> "The appellants further insist however, that the court erred in holding that the minor heirs are barred by the statute. The question whether a minor heir is barred where the administrator of the intestate's estate is barred, was before us in Jenkins vs. Jensen, 24 Utah 108, 109; 66 Pac. 773, and we there held that where an administrator neglected to bring an action to recover real property within the time prescribed by the statute, the heir of the intestate was also barred, though he was a minor at the accrual of the action in favor of the administrator." It was there further held that "where an administrator neglects to bring a suit to recover real property within the prescribed period of limitation, whereby the minor heir is barred, the heir has a right of action against

> the administrator and his bondsmen." We perceive no good reason to depart from the doctrine of that case, and must, therefore, regard it as controlling authority on this point herein notwithstanding the argument of counsel for the appellant against its correctness In this case the plaintiff Emma McGill was not only the administrator of the intestate's estate, but was also the guardian of the minor heirs and she, as their representative and trustee, being barred, as we have seen, such heirs are likewise barred."

In the case of *Mansfield* v. *Neff, et al.,* 43 Utah 258; 134 Pac. 1160, J. Frick at page 276 of 43 Utah said:

> "The administrator apparently took no interest in the property or its care for more than 15 years and did not file an inventory nor publish notice to creditors until more than 16 years after he was appointed. He must therefore rely entirely upon his legal rights, and, if he never had any, or if those he had, had become stale by lapse of time, he and those whom he represents must suffer the consequences."

Appellants state at page 13 of the brief that in the *Dignan case* there was both an administrator and a guardian and the property in question had not been distributed by the administrator to the minor or the guardian, and the case should have been determined without mention of the fact that a guardian had been appointed. The decision in the *Dignan case* does not indicate distribution but research of briefs in the Supreme Court in Case No. 1447, which is the *Dignan case,* indicate that Emma Dignan was appointed guardian of the minors on September 13, 1882,

and in October, 1882, Emma Dignan was appointed administrator of the estate, and that on March 11, 1899, the estate had a decree of distribution which was some five months before the commencement of the Dignan action as reported by the decision.

A further statement is made by appellants that in the *Dignan* v. *Nelson case* and *Jensen* v. *Jenkins case,* the statements relating to a guardian were mere obiter dictum. The *Dignan case* was brought in the name of the minor by Emma McGill as guardian, such that it was not obiter dictum in any sense but was inherent to the decision as rendered.

The fact remains that the decree of distribution as of March 23, 1942, in the George Albert Steadman estate expressly stated that the estate was to remain open until further order of the Court and no further order with reference to accounting or closing was filed between the aforesaid date and the commencement of this action. Why this estate was held open is a matter of conjecture but the fact which we must face is that the estate did remain open by Court order even though it is claimed that the omnibus clause of the decree of distribution passed title to the intervenors-appellants.

It is fundamental that a decree of distribution in an estate cannot create a title and that the probate courts of the State of Utah do not have the power to determine title and that therefore only what interest a decedent owned could be covered by an omnibus clause in a decree of distribution to heirs.

If George Albert Steadman, deceased, did own an interest in this property it would require procedure similar to the case of *Perry* v. *McConkie*, 264 P. 2d 852; 1 Utah 2d, 189, which concerned after discovered assets and would require that the property be inventoried in an ensuing probate and, as stated by J. Henriod in this case, at page 192 of 1 Utah 2d as follows:

> "After an accounting has been had, any corpus that may be found to be assets held for the benefit of heirs must be inventoried and appraised before any distribution can be had."

The aforesaid statement follows the necessary procedure of the Utah statutes with reference to inventory and distribution of after discovered assets in an estate or guardianship.

CONCLUSION

It is respectfully submitted that George Albert Steadman was never a member of the partnership known as Walter Steadman and Sons as shown by the Affidavit of Leonard R. Steadman as to the members of the partnership owning the property here involved. (P. 7 of Ex. 1.) All members of the partnership, namely, Walter Steadman (P. 20, Ex. 1), Edith E. Steadman, widow of Walter Steadman (P. 21, Ex. 1) and Leonard R. Steadman, Charles E. Steadman and William H. Steadman, together with their wives (P. 22, Ex. 1) transferred the full interest of all members of the partnership by deeds referred to in Exhibit 1. Thus, if George Albert Steadman had no

partnership interest in the property here involved there could be no inheritance to any of his heirs.

It is further respectfully submitted that in the event George Albert Steadman, deceased, did own an inheritable interest in the property here involved, the statutes of limitations had run against the administrator of the estate and the guardian of the intervenor minors in addition to the disclaimer of the administrator of the decedent's estate and that the decree entered in this matter should be affirmed.

Respectfully submitted,

W. D. BEATIE
Attorney for Respondents