1962

Melvin Bradshaw v. J. G. Miller et al : Brief of Plaintiff and Appellant

Utah Supreme Court

Patric H. Fenton; Attorney for Plaintiff and Appellant;

IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN BRADSHAW,
Plaintiff and Appellant,

—vs.—

J. G. MILLER, et al.,
Defendants and Respondents.

Case No. 9689

BRIEF OF PLAINTIFF AND APPELLANT

PATRICK H. FENTON
Attorney for Plaintiff
and Appellant
13 West Hoover Ave.
Cedar City, Utah

TABLE OF CONTENTS

Index of Cases and Authorities Cited

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STATEMENT OF FACTS

This matter comes before the above entitled court on a motion for summary judgment of the defendants which was granted by the District Court of Beaver County, Utah. The matter was placed in the District Court of Beaver County, Utah, by the plaintiff, Melvin Bradshaw, claiming ownership to three mining claims, to-wit, Sandman Placer Claim, Sandman No. 1 Placer Claim, and Sandman No. 2, Placer Claim, by virtue of location notices dated 28 April, 1956, and filed with the Beaver County Recorder on 1 May, 1956, and the performance of assessment work thereafter. Thereafter, on the 1st day of Sep-

tember, 1961, and on the 25th day of September, 1961, with actual knowledge of the claim of the plaintiff, the defendant J. G. Miller having been told of the deposit by the plaintiff, Melvin Bradshaw, having been shown the deposit by associates of the plaintiff, Melvin Bradshaw, and having checked the Recorder's Office to see whether or not a recording for assessment work for the year ending 1 September, 1961, had been made, top-filed a large portion of the area covered by the plaintiff's claims by two 20-acre claims known as Star and Star No. 1 Placer Mining Claims. Thereafter, the defendant J. G. Miller allowed the defendant, Beaver City Corporation and the defendant Beaver County, Utah, to remove products therefrom. That at the time said products were removed, each of said defendants know of the claim of the plaintiff to said property. Whereupon, the plaintiff brought an action against the defendants J. G. Miller and Beaver City Corporation for the products removed by Beaver City Corporation, and against the defendants J. G. Miller and Beaver County for the products removed by Beaver County, asking triple damages for same. Thereafter, the defendants Beaver City Corporation and Beaver County, Utah, filed an answer denying allegations of the plaintiff, and the defendant J. G. Miller filed an answer denying allegations and cross-complaining against the plaintiff for products removed from the claims of the defendant J. G. Miller and asking for title to be quieted. Thereafter the matter came before the trial court on motion for summary judgment propounded by the defendants, and on a motion to join additional parties propounded by the plaintiff. Thereafter, the trial court issued a memorandum decision granting the defendants' motion for summary judgment, which contained the following phrase, "Under these circumstances, the court is unable to determine within an area several miles square where such locations have been made, and must hold all three of the notices of location to be absolutely void." That said quotation purports to be the court's finding in relation to the plaintiff's three claims.

STATEMENT OF POINTS

Point I

The memorandum of decision is in error in declaring claims of plaintiff void in that the reason is that "the court is unable to determine within an area several miles square where such locations have been made," and this is not a proper reason without an attempt to locate same on the ground, and is improper on motion of summary judgment.

Point II

The trial court did not properly resolve issues on motion for summary judgment.

Point III

Order and judgment based thereon should be vacated, and the matter remanded for trial on merits.

ARGUMENT

Point I

THE MEMORANDUM DECISION IS IN ERROR IN DECLARING CLAIMS OF PLAINTIFF VOID IN THAT THE REASON IS THAT "THE COURT IS UNABLE TO DETERMINE WITHIN AN AREA SEVERAL MILES SQUARE WHERE SUCH LOCATIONS HAVE BEEN MADE," AND THIS IS NOT A PROPER REASON WITHOUT AN ATTEMPT TO LOCATE SAME ON THE GROUND, AND IS IMPROPER ON MOTION OF SUMMARY JUDGMENT.

The recording of the Sandman claim which was included in the affidavit of counsel in support of summary judgment recites "about 5 miles westerly from Manderfield and northwesterly from Black Mountain connecting onto Claim No. 1 on the north side Range 8, Township 29, SOUTH containing 40 acres." The recording on Sandman Claim No. 1 recites, "about ten miles Westerly from Manderfield and West of Black Mountain, Range 8 West, Township 29, SOUTH containing 40 acres." The recording on Sandman Claim No. 2 recites, "about five miles Westerly from Manderfield and Northwesterly of Black Mountain, connects on to Claim No. 1 on North Side and East Side, Range 8 West, Township 29, SOUTH containing 40 acres." There is an error in recording pertaining to Sandman Claim No. 1 which the undersigned was not aware of at the time of the motion for summary judgment. The original of the placer location recites, "about Five Miles Westerly from Manderfield and West of Black Mountain, Range 8 West, Township 29, SOUTH containing 40 acres." The only error of which the undersigned is aware in the recording is the reference to Black Mountain was five miles rather than ten miles as the recording shows.

The affidavit of Sam Cline in support of summary judgment acknowledged being an expert on land in Bea-

ver County, Utah, and recites that "any lands located either five or ten miles Westerly from the "Manderfield" mentioned in exhibits 1, 2 and 3, are located in Township 28 South, Range 8 West, Salt Lake Meridian, and are not and cannot be located in any other township than Township 28 South, Salt Lake Meridian." This item in itself shows definitely that any reference to any township 29 SOUTH is an error on the part of the locators on the Sandman claims, inasmuch as there is no possibility of it being Northwest of Black Mountain and Manderfield in Beaver County, Utah, and being in 29 South. Bearing in mind that the location notices of the plaintiff do not contain some of the niceties of description that might be desirable, this cannot be considered at this time, inasmuch as the trial court based its memorandum decision upon a finding that the court was unable to determine within an area of several miles square where such locations have been made, and must hold all three of the location notices to be absolutely void. It appears that the reason for holding these notices void is that the general area is not satisfactory to the trial court, and not because of any failure of an uneducated locator, who is not an attorney or an engineer, to describe boundaries. It is rather interesting that the location notices of J. G. Miller as to the Star Claim and Star No. 1, which were obviously prepared by either an attorney or an engineer, also tie to Black Mountain; also are in Range 8 West, Township 28 South, and in Section 3 thereof.

The courts have long recognized that at various times in the field, prospectors and miners might make mistakes, and as such have attempted to ask them only to identify their claims on the ground. Also, Section 40-1-2, Utah Code Annotated, 1953, makes specific provision to tie these items to natural objects, in subdivision 5 of said title:

"If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description

of the claim or mill site, located by reference to some natural object or permanent monument, as will identify the claim or mill site."

In the case of Fuller vs. Mountain Sculpture, 6 Utah 2, 385, 314 Pac. 2, 842, there is no question that the location notices therein are not set down with any more particularity than are the location notices of plaintiff in the case before the above entitled court. Our image in that case, decided by the Supreme Court of the State of Utah, is "80 acres in area consisting of two contiguous 40-acre tracts covering the south slope and face of a hillside, and other area, prominently visible from Park Valley by reason of the Turquoise colored rock visibly exposed thereon. Entire area is coverel with said stone." In addition there is an attempt to locate same in relation to a monument. This again was a person without benefit of engineering or legal talent setting forth his findings. The Supreme Court of Utah upheld this location as against a later locator, with the following comment:

"It is further to be observed that the defendants, through their conversation with Glen E. Fuller and their observations of the notices and monuments in Rock Canyon, had actual notice that the plaintiffs claimed the area in dispute. Therefore, even if there had been deficiencies of a technical nature in plaintiffs' location, that furnishes no succor to defendants in attempting to establish their claim. It is well settled that minor defects in the notices, descriptions, or procedure will not defeat the location of a prior claimant at the instance of one having actual notice."

In relation to the description in the Fuller vs. Mountain Sculpture case, the words "80 acres in area consisting of two contiguous 40-acre tracts covering the south slope and face of a hillside prominently visible from Park Valley by reason of the Turquoise colored rock visibly exposed thereon * * *" were upheld by the Su-

preme Court of the State of Utah. Certainly this is not as definite language as the description in the plaintiff's notices, to-wit: "About five miles Westerly from Manderfield and Northwesterly from Black Mountain." These points, of course, are acknowledged by counsel in his affidavit to be ascertainable points in Beaver County, Utah, and have been used by the defendants J. G. Miller in tying his own claims thereto.

As pertaining to the use of the figure "29" rather than 28 in the description by the plaintiff, there is no question that it is a mistake, and there is no question that anyone that is acquainted with the territory would realize immediately upon seeing same that it was a mistake. There is no question that the defendant J. G. Miller acknowledged same as a mistake, inasmuch as he waited until he thought a period of assessment work had run out and thought he was locating claims on which assessment work had not been done.

In the case of Cranford vs. Gibbs, 123 Utah 447, 260 Pac. 2, 870, it was held:

> "Neither niceties of description in original notice of mining claim location, nor more than reasonable accuracy in staking of claims is required to effectuate a valid claim location."

In this case, Gibbs made several locations in 1949, locating a group of claims known as the Yellow Canaries. The claims were generally tied in with each other, and were described generally as being two miles northeast of Marysvale, Utah, along Old County Highway. In May of 1950, Cranford made some locations that conflicted. Later in 1950, survey showed that the claims of Gibbs were actually several miles from the general description. The trial court held that although the general descriptions in the Yellow Canary claims as originally filed were erroneous when later corrected by survey, which is

the usual procedure, an amendment should be allowed to take care of same, and that the claims should be allowed from the date of the location. Certainly, the case at bar is such that at least there should be a hearing on same rather than a summary judgment that said claims are void, in view of the actual knowledge of J. G. Miller in connection with such matter.

The principle of what is sufficient notice is set forth in Section 219 of 40 Corpus Juris, Mines & Minerals, simply as to that which will give notice on the ground, and states "and immaterial or clerical errors or mistakes may be corrected or disregarded, particularly as to persons having actual notice of the location and boundaries of the claim, or who are estopped to complaint of the defects." Also, in the revision, 58 Corpus Juris Secundum, Mines & Minerals, Section 123, there is no material change in this item.

It is also most interesting to note that there are many jurisdictions that hold that a subsequent locator with actual knowledge cannot rely on inaccuracies or technical defects of the previous locator's claim. This is found in Bismark Mountain Gold Mining Co. vs. North Sunbeam Gold Co. 14 Idaho 516, 95 Pacific 14; also in the case of Heilman vs. Loughran, 57 Montana 380, 188 Pacific 370. It is very interesting to note that the respondent J. G. Miller, who is the beneficiary of the summary judgment complained of by the plaintiff and appellant, Melvin Bradshaw, is in the unique position of having actual knowledge of the plaintiff's claims and complaining of them on technical questions.

Point II

THE TRIAL COURT DID NOT PROPERLY RESOLVE ISSUES ON MOTION FOR SUMMARY JUDGMENT.

In the case of Johnson vs. Syme, 6 Utah 2, 319, 313 Pa-

ific 2, 468, in dissenting opinion, the requirements of ummary judgment have been set forth:

> "A summary judgment is proper only if the pleadings, depositions and admissions show that there is no genuine issue of material facts and that the moving party is entitled to such a judgment as a matter of law."

This is, of course, quoting a portion of Rule 56C of Utah Rules of Civil Procedure. On a summary judgment, the questions must be viewed most strongly against the moving party. In the case at bar, we have a moving party for summary judgment who has actual knowledge of location on the ground, requesting a summary judgment based upon technical deficiencies alleged to be in a location notice. Certainly, on an item of this nature, the evidence should be heard, and it should not be handled in a summary matter.

Point III

ORDER AND JUDGMENT BASED THEREON SHOULD BE VACATED, AND THE MATTER REMANDED FOR TRIAL ON MERITS.

In a matter of this nature, there can be no question but that a summary judgment is improper, inasmuch as summary judgment is based on an opinion that taking the location notices alone it cannot be told what area the locations are in, and the Supreme Court has ruled specifically that this in and of itself is not a disqualification. Also, where we have a later locator with actual knowledge of the prior claims of the plaintiff attempting to obtain a summary judgment on technical questions pertaining to location notice rather than actual knowledge, and intent of the later locator at the time the locations were made, it becomes quite clear that this matter should be heard. Under these circumstances, it seems proper that

the matter should be remanded back to the District Court for hearing, and that the summary judgment and items in connection therewith should be vacated.

Respectfully submitted,

PATRICK H. FENTON
Attorney for Plaintiff
and Appellant