

1964

State of Utah v. Ben Davis et al : Brief of Respondents

Utah Supreme Court

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In the
Supreme Court of the State of Utah

STATE OF UTAH, By and Through
Its Road Commission,
Plaintiff and Respondent,

vs.

BEN H. DAVIS and DOROTHY M.
DAVIS, his wife, A. P. NEILSON
and LILLIE M. NEILSON, his wife,
Defendants and Respondents,
DONALD W. LAYTON and HELEN
D. LAYTON, his wife,
Defendants and Appellants.

FILED
JUL 1 - 1964

Clock. Supreme Court, Utah
Case
No. 10112

RESPONDENTS' BRIEF

Appeal From Judgment of Third District Court
in and for Salt Lake County
HON. RAY VAN COTT, JR., *Judge*

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D. LAYTON, his wife,
Defendants and Appellants.

Case
No. 10112

RESPONDENTS' BRIEF

STATEMENT OF THE KIND OF CASE

This is a contest between defendants in a condemnation action involving conflicting claims to the property condemned.

DISPOSITION IN LOWER COURT

The lower court at the instance of Appellants and Respondents tried the case on an agreed statement of facts stipulated in open court and rendered judgment in favor of Respondents A. P. Neilson and Lillie M. Neilson and against Appellants Donald W. Layton and Helen D. Lay-

ton. Appellants' "Motion for New Trial or Amendment to Proceedings" was denied.

STATEMENT OF FACTS

The State of Utah commenced this action by filing a complaint for the condemnation of several parcels of real property located in Salt Lake County, Utah (R. 1-9). An Amended Complaint was subsequently filed (R. 17-25). Several parcels of real estate were involved in the action and there were several parties defendant including A. P. Neilson, Lillie M. Neilson, Ben H. Davis, Dorothy M. Davis, Donald W. Layton and Helen D. Layton. The property with which this appeal is concerned is designated in the pleadings as Parcel No. 02-3:44G:T and consists of an unimproved subdivision lot located on the west side of Salt Lake City.

The complaint alleges that the Davises, Neilsons and Laytons are the owners of the parcel of real estate here involved. No specification is made as to the nature of defendants' interests or claims in or to the real estate. The Laytons did not make a written appearance in the action or file an answer or other response to the complaint until after the entry of judgment. The Davises and Neilsons filed answers to the complaint and amended complaint by the terms of which they made an appearance, alleged ownership of the parcel in question and prayed that the case be set for trial.

The case was in due course set for pretrial before the Honorable Stewart M. Hanson. Pretrial was held on

December 18, 1963, approximately eight months following commencement of the action. The Laytons did not appear at the pretrial. After discussion with counsel present at the pretrial, the court determined that the issues to be tried were just compensation and title. With respect to the parcel in question the court noted that "there was a question as to the ownership of all of Lot 19, Block 7, Irving Park Addition" and that "this conflict appears on page 6 of the State Road Commission's Resolution which is attached to the Amended Complaint on file herein." In the written pretrial order the court stated that the "Laytons are in default in this action and their default is entered" and further stated that the title to the parcel in question may be proved by "a certified title report from a duly licensed title company" (R. 26-28).

Prior to the trial of the cause which was set for December 18, 1963, the Neilsons and Davises entered into a stipulation with the plaintiff (State of Utah) by the terms of which the valuation of the subject parcel was agreed to be the sum of \$461.00 (R. 29-31). The state agreed to pay said amount to Respondent upon the entry of judgment adjudicating Respondents' title to said parcel. On December 11, 1963, counsel for the Davises and Neilsons, in accordance with the directive of the pretrial court, delivered the title report of a licensed abstractor to the trial court as evidence of title and the court on the same day made and entered written findings of fact, conclusions of law and a judgment in favor of the Davises and Neilsons (R. 39-41, 42-43).

On December 17, following the pretrial and entry of their default, the Laytons filed their Answer to the Complaint and on the same day filed a Motion to Set Aside the Judgment (R. 44-45, 46). The motion came on for hearing before the court on January 2, 1964, at which time the trial court recommended to Appellants that they obtain legal counsel. The hearing on said motion was continued to January 20, 1964 to enable Appellants to obtain counsel and to present to the court their claim with respect to the real estate. The motion came on for hearing on January 20, 1964, and was again continued to January 27, 1964. On the 27th of January, the court made the following order (R. 60-61) :

“NOW THEREFORE, IT IS HEREBY ORDERED that the findings of fact, conclusions of law and judgment entered in the above entitled cause on December 11, 1963 be and the same are hereby vacated for the sole purpose of permitting the defendants Donald W. Layton and Helen D. Layton, his wife, to present evidence to the court in support of their contention that they have some claim or interest in or to the real property known as Parcel No. 02-3:44G:T and if such interest be established then for determination of the value of such interest.”

The cause was set for trial for January 29, 1964.

At the commencement of the trial both Appellants and Respondents stated to the court that they desired to state to the court their respective claims and obtain a determination from the court as to the respective title of the parties in and to the parcel of real estate in question. Appellants were again urged by the court to obtain legal

counsel (R. 47). They stated that they did not desire to do so and that they were prepared to proceed with the trial of their interest in the real estate.

The parties orally stipulated the facts pertaining to the title of the real estate and the court, in accordance with said stipulation, made and entered its written findings of fact, conclusions of law and judgment by the terms of which it determined that Appellants Donald W. Layton and his wife, Helen D. Layton, have no right, title or interest whatever in or to the real estate, and that the Respondents A. P. Neilson and his wife, Lillie M. Neilson, are the owners of said real estate and entitled to judgment for the value thereof in the sum of \$461.00 plus interest (R. 47-51).

Appellants have not purchased a transcript of the proceedings at trial and said proceedings are therefore not before the court on this appeal.

ARGUMENT

POINT I.

THE TRIAL COURT HAD JURISDICTION TO ADJUDICATE THE RESPECTIVE CLAIMS OF APPELLANTS AND RESPONDENTS IN AND TO THE REAL ESTATE WHICH WAS THE SUBJECT OF THE CONDEMNATION ACTION.

This action was instituted by the filing of a complaint for condemnation which complaint showed a conflict between the "recorded owners" of the parcel in question. At the pretrial the parties appearing at said hearing

acknowledged the conflict and the trial court directed that the conflicting claims of title be determined in the condemnation action. Appellants thereafter entered their appearance. A transcript of the proceedings had at the trial would show that the parties stipulated the facts; stated their respective claims, and asked the court to determine the merit of said claims.

Appellants now apparently claim that the court was without jurisdiction or that the judgment was "ultra vires" because the court did not have power on the basis of pleadings and proceedings had before it to determine the interests of the parties in the real estate involved in the condemnation action.

The powers of the court in eminent domain proceedings are set out in Section 78-34-8 U.C.A., 1953, which provides,

"§78-34-8. Powers of Court or Judge. — The court or judge thereof shall have power:

(2) To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor. . . ."

The exercise of this power, which is expressly granted by statute is exactly what the court undertook in this case. Further, the court's determination was at the instance and with the consent of Appellants and Respondents.

Even assuming that the issues of title were not raised by the pleadings, said issues were tried with the consent of the parties and findings were made by the court in accordance with the evidence and as permitted by Rule

15(b). Appellate rules of review do not permit this court to assume that the trial court acted contrary to or in excess of its powers in the absence of a record showing that it did.

Any condemnation action resulting in a money judgment for the defendant necessarily involves proof of such defendant's title to the real estate involved. The trial court in this case had the power "to hear and determine all adverse or conflicting claims to the property sought to be condemned." It undertook to do so in accordance with pleadings, pretrial order and stipulations of parties made at the trial.

The principal problem in the case is that the Appellants have consistently refused repeated requests and suggestions made by the trial court both before and after judgment that Appellants obtain legal counsel and the further fact that Appellants who claim only a one-sixth interest in a parcel having a value of \$461.00 apparently do not feel financially justified in purchasing a transcript of the proceedings had before the lower court at the trial of this cause.

POINT II.

THE COURT DID NOT ERR IN THE TRIAL OF THE CASE.

The Appellate Court will be unable to understand the gist of the Appellants' argument regarding Section 78-12-5.1 U.C.A., 1953, without a transcript of the evidence taken at the trial. The trial court's determination involved application of this statute and apparently Appellants now contend that the statute is "arbitrary, un-

reasonable and unconstitutional'' (Appellants' Brief, Pg. 17). This argument has already been disposed of by prior decisions of this court wherein it has been determined that the statute is a valid statute of limitations. (See e. g. *Hansen v. Morris*, 3 Utah 2d 310, 283 P. 2d 884.)

CONCLUSION

Appellants have failed to bring before this court a complete record of the proceedings below and are not entitled to a review of such proceedings unless and until they do so. The trial court clearly has the statutory power in condemnation proceedings to determine adverse and conflicting claims to the real estate which is the subject of the action. The validity of the statute involved in the trial court's determination has been previously upheld by this court. The judgment of the trial court should be affirmed.

Respectfully submitted,

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