1983

Blaine Barnard v. Ruth D. Barnard And Paul D. Barnard : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD, Plaintiff and Appellant, vs. RUTH D. BARNARD and PAUL D. BARNARD, Defendants and Respondents.	*) *) *) *) *) *) *	Supreme Court No. 19080

BRIEF OF APPELLANT

* * * * *

APPEAL FROM THE JUDGMENT OF THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

* * * * *

David R. Daines, Esq.
Christopher L. Daines, Esq.
DAINES & SMITH
108 North Main, Suite 203
Logan, Utah 84321

Attorneys for Plaintiff
and Appellant

David B. Havas
HAVAS AND HAVAS
Suite 216 Harrison Place
3293 Harrison Boulevard
Ogden, Utah 84403

Attorney for Defendants
and Respondents

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD,	*	
	)	
Plaintiff and Appellant,	*	
	)	
vs.	*	Supreme Court
	)	
	*	No. 19080
RUTH D. BARNARD and	)	
PAUL D. BARNARD,	*	
	)	
Defendants and Respondents.	*	

BRIEF OF APPELLANT

* * * * *

APPEAL FROM THE JUDGMENT OF THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

* * * * *

David R. Daines, Esq.
Christopher L. Daines, Esq.
DAINES & SMITH
108 North Main, Suite 203
Logan, Utah 84321

Attorneys for Plaintiff
and Appellant

David B. Havas
HAVAS AND HAVAS
Suite 216 Harrison Place
3293 Harrison Boulevard
Ogden, Utah 84403

Attorney for Defendants
and Respondents

TABLE OF CONTENTS

CASES AND AUTHORITIES CITED

CASES

TREATISES

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD, Plaintiff and Appellant,	) *) *)	
vs.	*	Supreme Court
	*	No. 19080
RUTH D. BARNARD and PAUL D. BARNARD, Defendants and Respondents.	) *) *) *	

BRIEF OF APPELLANT

* * * * *

NATURE OF THE CASE

This is an action for specific performance wherein Plaintiff-Appellant sought enforcement of an oral contract between Plaintiff-Appellant as buyer and Defendant-Respondent, Ruth D. Barnard as seller of two acres of real estate located in Box Elder County, Utah.

DISPOSITION IN LOWER COURT

After non-jury trial on the merits, the trial court held that the contract was unenforceable, and ordered Defendant-Respondent, Ruth D. Barnard, to return the $6,000 purchase price to Plaintiff-Appellant. The trial court also declared unenforceable a warranty deed from Defendant-Respondent, Ruth D. Barnard, to Defendant-Respondent, Paul D. Barnard, and quieted title to the property in favor of Defendant-Respondent, Ruth D. Barnard.

NATURE OF RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks reversal of the trial court's determination that the contract was unenforceable and remand with instructions to find the eastern boundary of the real estate to be conveyed and order specific performance of the contract.

STATEMENT OF FACTS

As of September 3, 1976, Defendant-Respondent, Ruth D. Barnard (hereinafter "Ruth") was the owner in fee simple absolute of the tract of land (hereinafter "total tract") more particularly described on APPENDIX A (R. 82). On September 3, 1976, Ruth executed a Warranty Deed to the total tract in favor of her son, Defendant-Respondent, Paul D. Barnard (hereinafter "Paul"), which deed was in the nature of a testamentary diposition and was not recorded until 1979 (R. 83, 85). On September 25, 1978, Ruth entered into a contract (hereinafter "the contract") with another son, Plaintiff-Appellant (hereinafter "Blaine") whereby Ruth was to convey two acres (hereinafter "the two acre parcel") of the total tract to Blaine, reserving a life estate in Ruth, in exchange for $6,000 (R. 83, 84). On September 25, 1978 Blaine paid the $6,000 puchase price to Ruth (R. 84). On April 5, 1979, Ruth gave Blaine a receipt for the $6,000 (R. 19). Prior to April 16, 1979, Ruth threatened to sell the property, and Ruth and Blaine had a disagreement after which Ruth tendered $6,170 to Blaine who refused to tender (R. 84, 19). On April 13, 1979, Ruth's Warranty Deed to Paul was recorded (R. 85).

The relevant configuration of land and ownership at the time of the contract is rough, as set forth in APPENDIX B (R. 83, See Respondents' Disposition, Appendix 1). The two acre parcel was to border on Blaine's property, the Allen property and the Church's north boundary (R. 84). The remaining boundaries, specifically the east boundary, was not indicated (R. 84). In 1981, Blaine had a surveyor prepare a legal description of two acres of land within the total tract, which is contained on APPENDIX C, without consulting Ruth (R. 85).

ARGUMENT

POINT I

THE TWO ACRE PARCEL WAS SUFFICIENTLY DESCRIBED SO AS TO RENDER THE CONTRACT ENFORCEABLE

The trial court, in it's capacity of finder of fact, identified the tract of land out of which the two acre parcel was to have been "carved" and at least three of the boundaries of the parcel, but had specific difficulty in fixing the eastern boundary of the land to be conveyed. The question presented is whether such identification of the subject parcel as was made by the finder of fact was sufficient, as a matter of law and equity, to support a decree of specific performance.

Specific performance is an equitable remedy, and the reviewing court may therefore exercise a broad scope of review encompassing both questions of law and fact. Reed v. Alvey, 610 P.2d 1374, 1377 (Utah, 1980). In actions for specific performance, the terms of the contract must be certain so that

the Court can carry out the intent of the parties, but with regard to the certainty of descriptions of real estate,

> ". . . reasonable certainty is all that is required and if the description of land is sufficiently certain to enable the land to be located and examined, it is sufficient to justify specific performance of the contract." 71 Am Jur, Specific Performance § 117 at 149.

This principle, as applied to descriptions of land, stems from the more comprehensive maxim "in equity that is certain which can be made certain." See Eliason v. Watts, 615 P.2d 427 (Utah, 1980).

In the present case, then, if the two acre parcel can be so identified as to be located and examined, then it is sufficiently certain to warrant the remedy of specific performance.

In Jacobson v. Cox, 202 P.2d 714 (Utah, 1949), this Court considered the question of the enforceability of a contract for the sale of land where the adequacy of the description was challenged. In holding that reference to "certain leased land up in the old field, now under fence above the Spring Branch Ditch" was sufficiently definite to render the contract enforceable, this Court explained:

> "The only reasonable means by which a person can describe property located on a public domain, and which has never been surveyed, is by reference to natual monuments. The original parties to the contract could not have described the land by metes and bounds without going to the expense of running a survey." Jacobson v. Cox, 202 P.2d 714 at 721 (Utah, 1979).

In the present case, the two acres had not been surveyed, and the only way the property could be described was

reference to which "corner" of the total tract the two acre parcel was located in. They apparently agreed upon the Northwest corner as the trial court's findings pointed out by finding boundaries of the two acres in the northwestern portion of Ruth's property.

This Court held that a contract for the sale of a small tract of land which was part of a larger tract was specifically enforceable in spite of the lack of a legal description for the smaller "carved out" tract in Stauffer v. Call, 589 P.2d 1219 (Utah, 1979). In Stauffer, the parties entered into a contract to sell and purchase forty acres of land, a description of which was supposed to have been attached to the contract, and additional ten acres on which two houses were located. The lower court received parol evidence but ruled that the contract was unenforceable. The Supreme Court reversed and remanded with instructions to "decide what was the legal description of the land included in the agreement to purchase." Stauffer, 589 P.2d 1221. The Supreme Court stated that the location of the ten acres was clear, that the location of a portion of the forty acres was clear (all land on south of freeway except 40 acres of fenced ground). Stauffer, 589 P.2d 1221. Apparently, the Court was not informed as to the amount of acreage to be conveyed over and above what had been "clearly" identified, but nonetheless instructed the lower court to decide on the legal description.

In the present case, as in Stauffer, the seller was to have "carved out" of a large tract of land, a smaller parcel

for the buyer. The general location of the smaller parcel within the tract was known to and understood by the parties, even though the details of the boundaries were not described by metes and bounds. The Stauffer holding went further in fixing the location of land in that a portion of the forty acres of land to be conveyed was not even generally fixed within the larger tract. In the present case, the location of the two acres was generally fixed at the northwest portion of Ruth's property. In fact, three boundaries were found by the Court in the present case.

The principles of Stauffer and Jacobson v. Cox, when applied to the present case and the closed examination of the facts in each case, dictate a reversal of the trial court's erroneous conclusion that the location of the tract to be conveyed was too indefinite.

> "Applying these principles, a description of land to be conveyed, as 100 acres on the west end of the vendor's farm, bounded on the north and south by the property of certain persons named, the location of whose land is well known, is sufficient to sustain a decree for specific performance." 71 Am Jur 2d, Specific Performance, § 117 at 150.

The two acres was sufficiently identified so as to sustain a specific performance decree since the total acreage to be conveyed was specified, the tract out of which the acreage was to be "carved" was identified and the location of the property within the tract was generally fixed and specifically located as to three boundaries.

POINT II

SPECIFIC PERFORMANCE OF THE CONTRACT IS DICTATED UNDER RULES OF EQUITY

Even if the identity of the land were uncertain or vague or ambiguous, the contract would be enforceable via specific performance. Ruth, by her words and actions, demonstrated her understanding that a two acre parcel in the northwest corner of her tract of land had been sold to Blaine, and Ruth should not be allowed to avoid the consequences of her manifested intent with regard to the contract on the basis of a claimed deficiency in the contract.

The general rule in this regard is well expressed in 28 Am Jur 2d, Estoppel and Waiver § 59 at 677:

> "Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction. . . which he might have rejected or contested."

In cases such as the present one:

> "The estoppel is also appied to prevent one who with a knowledge, accepts the proceeds of sale of his property. . .from disputing the validity of such sale or the title of the purchaser."

28 Am Jur 2d, Estoppel and Waiver § 59 at 679 (emphasis added).

In Jacobson v. Cox, 202 P.2d 714 (Utah, 1949), the Plaintiff (in position of vendor) asserted that the contract of sale was too ambiguous to be enforceable. The Court struck down the Plaintiff's contentions, and while admitting that the contract had "infirmities," ruled:

> "We have a written instrument which is attacked because of uncertainties of ambiguities. We are of the opinion that Plaintiff, by his acts and conduct is estopped from taking advantage of these

> deficiencies. To hold otherwise would permit the statute of frauds to be used by him as a shield to defeat what appears to be a just and equitable cause against him."

Jacobson v. Cox, 202 P.2d 714, 722.

In the present instance, the facts bear out a strong case for invocation of the equitable principle of estoppel against Ruth with regard to the claimed insufficiency of description of the two acres. Ruth agreed to sell two acres and identified at least the general location of the two acres within her larger tract. On the same day, she accepted $6,000 cash in full payment. She did not inform Blaine at that time or thereafter that in 1976 she had executed and delivered to Paul a Warranty Deed to her entire tract of land (Statement of Facts, See also R. 17, 21). In April of 1979, Ruth gave Blaine a written receipt for the $6,000 purchase price. Later that month, Ruth had a disagreement with Blaine, and on April 13, the Warranty Deed to Paul was finally recorded (Statement of Facts). Even after the suit had commenced, Ruth referred to contract as one she considered was binding on Blaine (R. 19). The course of Ruth's conduct and actions clearly estop her from claiming the description of the land to be too ambiguous so as to be enforceable. To hold otherwise would allow Ruth to keep the full purchase price until she felt it was convenient or profitable for her to return it, while in the meantime, leading Blaine to believe that he had a binding contract. If the sale had been for a fee simple interest, Blaine could have been

expected to enter into the property and possess it immediately after payment of the $6,000. But since Ruth had sold only a remainder interest, Blaine understood that he was not to presently assume possession. Blaine's inability to assume possession facilitated Ruth's apparent objective to "play favorites" among her children by failing to execute a deed to Blaine. A reversal of the trial court's ruling is the only method by which Ruth can be prevented from profiting by her inequitable conduct with respect to Blaine. As stated in Stauffer v. Call, 589 P.2d 1219, 1221 (Utah, 1979):

> "This Court takes judicial knowledge of the fact that land values in the area have increased greatly since the contract was made. By refusing to agree on the exact description of the land sold. . .the seller could hope for a mighty windfall by selling if at its enhanced value to others." (emphasis added)

Equity dictates that the contract be enforced against Ruth, who accepted the full purchase price for the land, and in favor of Blaine, who in good faith paid the price and believed he had a contract. There is no evidence on the record of any dispute regarding the location and extent of the land to be conveyed until Defendants filed their answer. See Eliason v. Watts, 615 P.2d 427, 429 (Utah, 1980). It is now asserted as a convenient device to deprive Blaine of the benefit of his bargain. Equity should not tolerate such an effort.

CONCLUSION

The trial court erred in holding that the contract in unenforceable because 1) the land to be conveyed was identified

by amount of acreage, location within the tract and at least three boundries, and 2) Ruth is estopped from asserting any technical deficiency in the contract. This Court should therefore do equity by reversing the trial court's decision to deny specific performance and by remanding with instructions to "decide what was the legal description of the land" in accordance with Stauffer v. Call, 589 P.2d 1219 (Utah, 1979.

RESPECTFULLY SUBMITTED this 13th day of July, 1983.

DAINES & SMITH

David R. Daines

Christopher L. Daines

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of July, 1983, I mailed, postage prepaid two (2) copies of the foregoing APPELLANT'S BRIEF to:

David B. Havas
HAVAS AND HAVAS
Suite 216 Harrison Place
3293 Harrison Boulevard
Ogden, Utah 84403

APPENDIX A

Beginning at Northwest Corner of Northeast Quarter of Section 2 T. 8 N. R. 2 W. SLM, thence South 268 feet, thence South 70°07' E. 420 ft., more or less, to West line of State Highway, thence North 32°1' East along said line 625.6 feet, thence North 67°31'40" West 566.56 feet, thence S. 23°28' W. 155.2 ft., th. N. 67°31'40" W. 256.3 ft., th. S. 21°46'30" W. 485.6 ft., th. S. 69°45'15" E. 308.7 ft., th. N. 1°26' W. 261 ft to the pt. of beg. EXCEPTING therefrom the following described tracts:

Beg. at a pt. located N. 341.26 ft. and E. 195.68 ft. from SW cor. of SE quarter of said Sec. 2, said pt. being on Grantor's N. property line, th. S. 23°28' W. 134.2 ft., th. S. 67°31'40" E. 40.0 ft., th. N. 23°28' E. 134.2 ft. to said N. line, th. N. 67°31'40" W. 40.0 ft. along said N. line to pt. of beg.

Beg. at a pt. which is 280 ft. N. and N. 67°31'40" W. 95 ft., more or less, from SE cor. of SW quarter of Sec. 35 T. 9 N. R. 2 W. SLM which pt. is on the E. line of the County Road, and running th. S. 21°46'30" W. 95 ft., along said road; th. S. 67°31'40" E. 185 ft., th. N. 21°46'30" E. 95 ft., th. N. 67°31'40" W. 185 ft to pt. of beg.

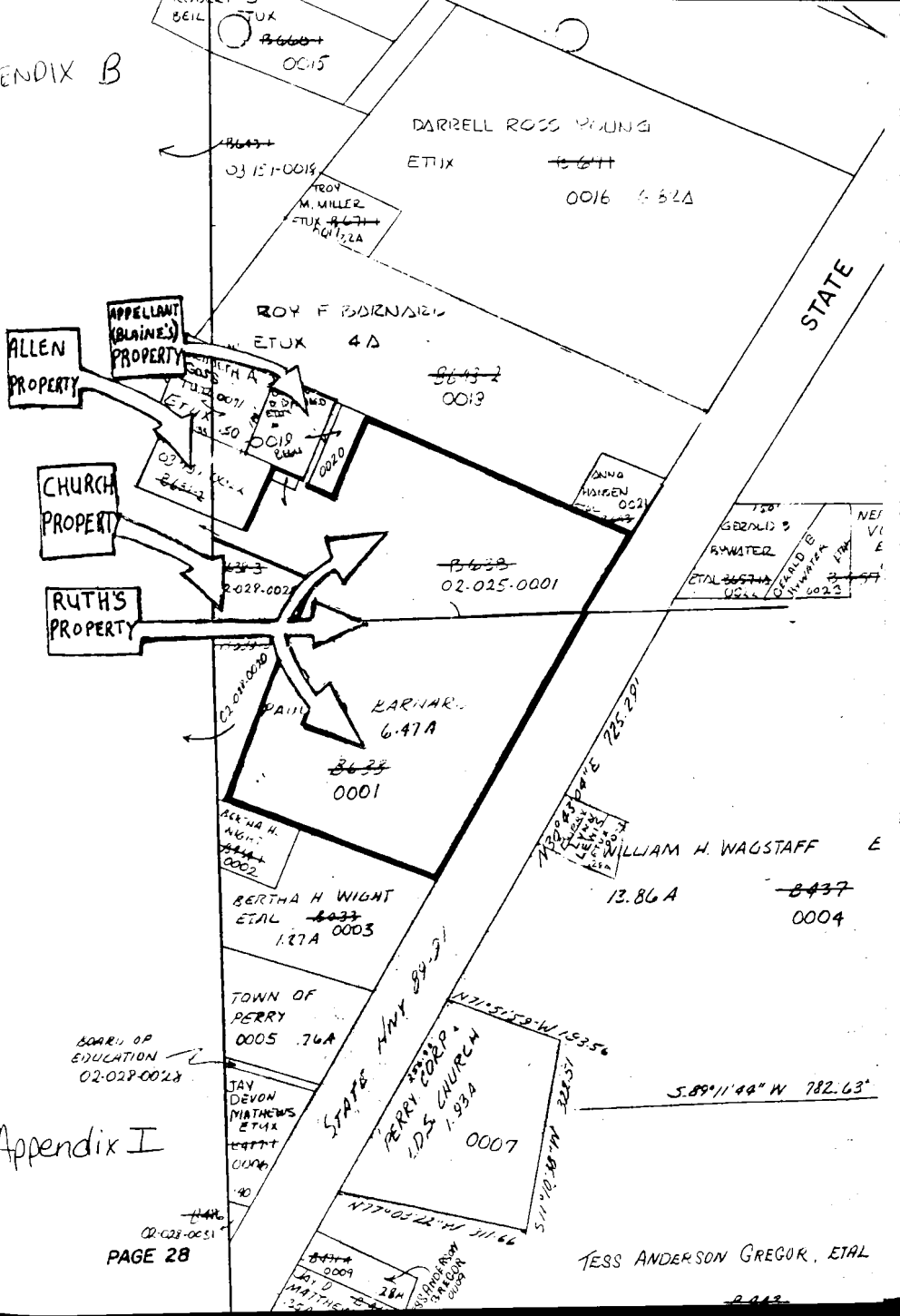
Beg. at a pt. N. 31°20' E. 245.6 ft. and N. 66°58' W. 256.5 ft. from SW cor. of SE quarter of Sec. 35 T. 9 N. R. 2 W. SLM, th. N. 22°25' E. 21.0 ft., th. S. 66°58' E. 201.0 ft., th. S. 21°46'30" W. 21.0 ft., th. N. 66°58' W. 201.24 ft to the pt. of beg.

Beg. at a pt. S. 1°26' E. 261 ft. and N. 69°45'15" W. 308.7 ft. from NW cor. of NE quarter of Sec. 2 T. 8 N.R. 2 W. SLM, an existing fence corner of record, said point being S. 162.0 ft. and W. 2936.76 ft. from NE cor. of said Sec. 2, thence N. 21°46'30" E. 390.6 ft., thence S. 67°35'50" E. 345.4 ft., th. S. 23°18'15" W. 378.0 ft., th. N. 69°45'15" W. 335.41 ft to pt. of beg.

Beg. at a pt. N. 31°21' E. 245.6 ft. from SW corner of SE quarter of Sec. 35 T. 9 N. R. 2 W. SLM, th. N. 24°02' E. 21 ft., thence N. 66°58' West 55.5 ft., thence S. 22°25' W. 21 ft., th. S. 66°58' E. 55.26 ft. to the pt. of beg.

Together with all water rights and improvements belonging thereto.

APPENDIX B



Appendix I

APPENDIX C

Part of the SE Quarter of Section 35, T9N, R2W and part of the NE Quarter of Section 2, T8N, R2W SLB&M, beginning at a point located 157.38 feet North and 47.92 feet East of the NW Corner of NE Quarter of said Section 2, thence N21°46'30"E 71.22 feet, thence S67°31'40" E 64.43 feet, thence N23°28'E 21.00 feet, thence S67°31'40"E 40.00 feet, thence N23°28'E 134.2 feet to the grantor's North line, thence S67°31'40"E 346.79 feet, thence S22°28'20"W 226.39 feet, thence N67°31'40"W 453.04 feet to the point of beginning, containing 2.0 acres.