1983

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

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD,	:	
Plaintiff/ Appellant,	:	Case No. 19080
vs.	:	
RUTH D. BARNARD and PAUL D. BARNARD,	:	
Defendants/ Respondents.	:	

BRIEF OF RESPONDENTS

APPEAL FROM JUDGMENT OF THE

FIRST JUDICIAL DISTRICT COURT OF

BOX ELDER COUNTY

HONORABLE JOHN F. WAHLQUIST

DAVID R. DAINES and
CHRISTOPHER L. DAINES of
DAINES AND SMITH
108 North Main, Suite 203
Logan, Utah 84321

Attorneys for Plaintiff/
Appellant

DAVID B. HAVAS
Harrison Place, Suite 216
3293 Harrison Boulevard
Ogden, Utah 84403

Attorney for Defendants/
Respondents

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD,	:	
Plaintiff/ Appellant,	:	Case No. 19080
vs.	:	
RUTH D. BARNARD and PAUL D. BARNARD,	:	
Defendants/ Respondents.	:	

BRIEF OF RESPONDENTS

APPEAL FROM JUDGMENT OF THE

FIRST JUDICIAL DISTRICT COURT OF

BOX ELDER COUNTY

HONORABLE JOHN F. WAHLQUIST

DAVID R. DAINES and
CHRISTOPHER L. DAINES of
DAINES AND SMITH
108 North Main, Suite 203
Logan, Utah 84321

Attorneys for Plaintiff/
Appellant

DAVID B. HAVAS
Harrison Place, Suite 216
3293 Harrison Boulevard
Ogden, Utah 84403

Attorney for Defendants/
Respondents

TABLE OF CONTENTS

CASES AND AUTHORITIES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

BLAINE BARNARD,	:	
Plaintiff/Appellant,	:	Case No. 19080
vs.	:	
RUTH D. BARNARD and PAUL D. BARNARD,	:	
Defendants/Respondents.	:	

BRIEF OF RESPONDENTS

NATURE OF THE CASE

Respondents agree with Appellant's statement of the nature of the case.

DISPOSITION IN LOWER COURT

Respondents agree with Appellant's statement of the disposition in lower court.

NATURE OF RELIEF SOUGHT ON APPEAL

Respondents request that the judgment of the lower court be affirmed in all its particulars.

STATEMENT OF FACTS

Respondents generally agree with Appellant's Statement of Facts, however, feel that the following amplification and clarification is in order.

The contract referred to for the sale of two acres of Ruth's land to Blaine was an oral agreement wherein Ruth agreed to sell to Blaine two acres to be possessed by him "after the fall harvest after (her) death." (R. 33).

The two acres would have had to come qut of Ruth's total land which was an irregularly shaped parcel containing approximately seven acres. (See Appendix I).

The oral agreement was lacking in the indications where the boundaries of the two acres would be, but that it was to border on Blaine's land, the Allen land and the Church land's north boundary. That there were no other indications where the remaining boundaries would be, specifically there was no indication where the east boundary would be located. (R. 84).

ARGUMENT

POINT I

UNLESS THE DISTRICT COURT ABUSED ITS DISCRETION IN THE DETERMINATION OF THE FACTS AND AMPLIFICATION OF THE LAW, THE TRIAL COURT'S JUDGMENT SHOULD NOT BE DISTURBED.

This Court's doctrine of review has been well established and the Court has repeatedly stated that "unless the

District Court abused its discretion in the determination of the facts and application of the law, the judgment of the District Court should not be disturbed." Reed v. Alvey, 610 P.2d 1374, 1377 (Utah, 1980).

Appellant has not shown where the District Court abused its discretion in the determination of the facts in this case. In fact a close examination of the configuration of the land involved would indicate that the trial court did all it could in attempting to establish the boundaries of the land which was allegedly sold.

Appendix I indicates where the difficulty comes in when establishing the exact boundaries of the land to be conveyed. The Court found that the two acres to be sold was generally located in the northwest corner of Ruth's seven acre parcel of land. The Court further found that the land was to border on Blaine's (Appellant's) land, the Allen land and the Church land's north boundary.

Simple mathematics would show that the difficulty comes when deciding where the agreement would have the balance of the two acre property run. As the examples in Appendix II and Appendix III show, the two acres could be determined to run contiguous to the Church land, in which case the two acre parcel would be shaped as indicated in Appendix II, or it could be determined as only going as far south as the Church land's

northern boundary, in which case the two acre parcel would be shaped as shown in Appendix III, which is approximately what Appellant's two acre legal description would show.

Clearly, the determination of the eastern boundary of the two acre parcel would determine the location of the southern boundary and the configuration of the land.

This Court has as recently as this year indicated that: "the trial court's findings are accorded a presumption of validity and correctness and this court will not disturb the findings if there is substantial support for them in the evidence." Young v. Moore, 663 P.2d 78 (Utah, 1983) citing Litho Sales, Inc. v. Cutrubus, 636 P.2d 487 (Utah, 1981).

In Young, supra, this Court also reiterated its position that this Court will not upset the trial court's findings if the evidence does not clearly preponderate against them.

The trial court here heard all of the evidence presented to it, observed the witnesses and examined the various exhibits introduced. Appellant fails to show what evidence the Court ignored or misinterpreted. He cannot show this because from the record before this Court there is no indication of it.

All that Appellant can claim is that there was an oral agreement for the sale of a future interest of a two acre piece of land which would be located in the northwest corner of sel-

ler's seven acre piece of land. The record is totally lacking in any preciseness of the boundaries of the two acre parcel and thus the trial court correctly applied the law to the facts it had before it.

POINT II

IN ORDER FOR SPECIFIC PERFORMANCE OF AN ORAL CONTRACT TO BE AVAILABLE, THE PLAINTIFF MUST ESTABLISH THE CONTRACT BY CLEAR, CONVINCING, AND DEFINITE EVIDENCE.

Specific performance is a doctrine of equity which essentially requires a showing of the terms of the contract with sufficient preciseness so that the Court is certain of the intent of the parties.

This Court has set forth the requirements of what has to be proven before the remedy of specific performance will be granted. Thus in Reed v.Alvey, 610 P.2d 1374 (Utah, 1980), this Court in discussing specific performance in a case involving a written contract said: "Before specific performance will be employed by the courts to enforce a contract the terms of the agreement must be reasonably certain so the parties know what is required of them, and definite enough that the courts can delineate the intent of the contracting parties." 610 P.2d at 1377.

The Court then cited from 71 Am. Jur. 2d, Specific Performance, Sec. 33, p. 53, as follows:

> For specific performance is demanded that degree of certainty and definiteness which leaves in the mind of the court no reasonable doubt as to what the parties intended, and

> no reasonable doubt of the specific thing equity is to compel to be done ... in determining whether a contract is too uncertain to be specifically enforced, the test is whether the parties understood by the terms used what was intended in the agreement, and whether their minds met with respect thereto.

610 P.2d at 1377.

Clearly Appellant cannot show more than the general location of the two acres to be sold, that is, that the property to be sold would be in the northwest portion of the seven acres of land owned by Ruth. He attempts to argue that an exact description is unnecessary because all that was necessary is that the general location of the property to be sold be understood.

Appellant supports his position by referring the Court to various cases where the property to be sold was referred to in general terms rather than described by metes and bounds. However, each of the cases cited by Appellant deal with contracts in writing, whereas here the contract is oral and consequently requires a greater burden.

This Court early on decided that: "Where a party seeks specific performance of a parol contract in equity, he must establish the terms thereof with a greater degree of certainty than would be required to establish the same contract in action at law." Montgomery v. Berrett, 121 P. 569 (Utah, 1912).

In Montgomery, Id., the Court further stated that: "Equity requires as a condition of specific performance a clear

mutual understanding and a positive assent of both sides as to the terms of the contract." 121 P. at 570.

This doctrine has been a consistent part of our law, as was generally reiterated in Ryan v. Earl, 618 P.2d 54 (Utah, 1980), where the Court said: "The evidentiary burden is upon Plaintiff, in seeking specific performance of an oral contract to convey land, to establish the contract by clear, convincing, and definite evidence... . Holmgren Brothers, Inc. v.Ballard, Utah, 534 P.2d 611 (1975)." 618 P.2d at 55.

The Ryan, supra, and Holmgren, supra, theory was recognized in Young v. Moore, supra. In the case before the Court there has been no showing of the contract by clear, convincing and definite evidence.

The cases involving written contract relied on by Appellant in his brief are not applicable to this case notwithstanding the foregoing.

Appellant relies on Staufer v. Call, 589 P.2d 1219 (Utah, 1979), where the written contract referred to the properties in general terms which would allow a party utilizing only the clues contained in the written agreement to go to the ground and accurately locate the parts intended to be sold. It referred, for example, to two houses using the natural boundaries, fenced natural farm ground on the SE (south side from Interstate Freeway) and ground SE of the old highway. Staufer, 589 P.2d at 1220.

The cases are consistent in holding that an exact legal description in a written contract need not be required in order to enforce the contract, provided the property to be sold can otherwise be ascertained.

Thus in Reed v. Alvey, 610 P.2d 1374 (Utah, 1980) the written agreement for the sale of real property described the property in vague and incomplete terms, i.e. "corner of Hillview and Ninth East," the Court indicated that: "the extrinsic evidence presented by the Plaintiff concerning the transaction defines the subject matter in question in sufficient detail to support specific performance." 610 P.2d at 1377.

The Reed Court went on to indicate the type of evidence presented at trial regarding the acquisition by the Defendants and the construction of a fourplex apartment unit on each lot and the selection of each unit as belonging to certain purchasers. The Court then said: "Thus, everyone connected with the deal knew what land was involved and the ambiguous nature of the terms used in the written agreement when viewed in light of the extraneous evidence presented at trial does not render the contract unenforceable or defeat an action for specific performance." 610 P.2d at 1378.

Here there is no extrinsic evidence which sheds any more light on the contract. The Appellant has simply not proven what the agreement was in regard to the property boundaries and thus specific performance is not available to him.

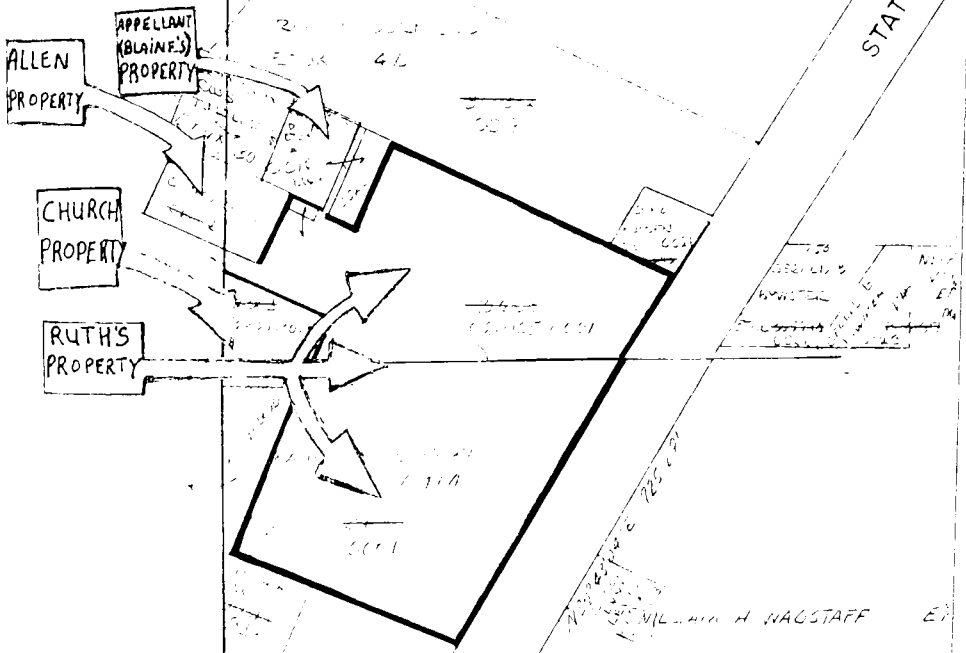
Similarly, Jacobsen v. Cox, 202 P.2d 714 (Utah, 1949), cited by Appellant is not applicable since the contract there was in writing and referred to the land involved in certain, although general, terms. The property was described by use of fences, general names, i.e. "Spring Branch Ditch, Cox Field," etc. The land was not surveyed since all parties knew the exact location of the property involved, had been familiar with and used it for many years, had described it in documents by reference to fences, natural monuments, and size and occupancy.

The Court, citing from American Jurisprudence, said:

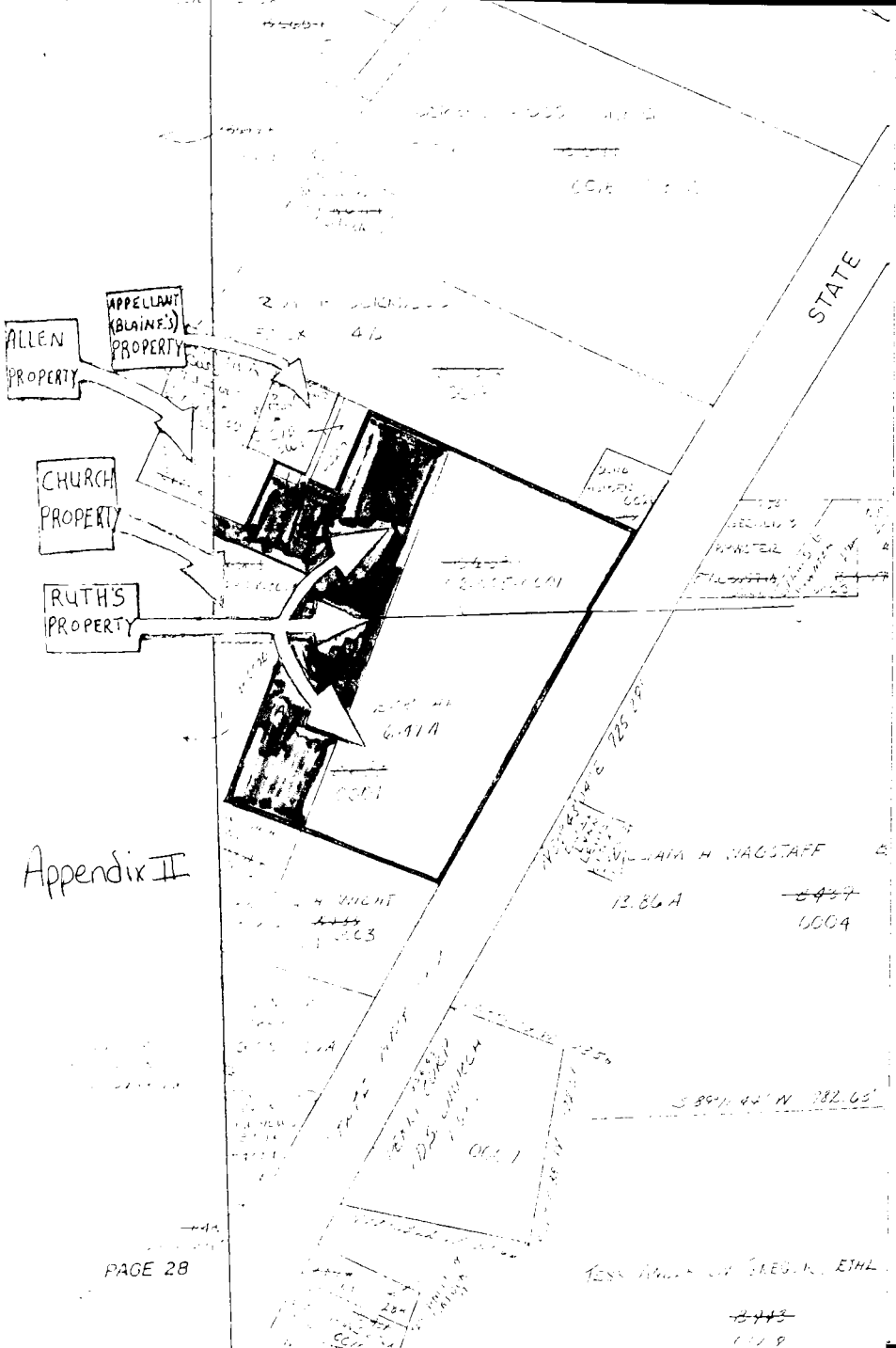
> A description is sufficient when read in the light of circumstances of possession, ownership, situation of those parties, and their relation to each other and to the property, as they were when the negotiations took place and the writing was made, it identifies the property. A description is sufficient, although vague in respect of the boundaries, if it identifies a specific tract of land when applied to the facts on the surface of the earth, as where a surveyor, with the contract in his hands and with the aid of no other means than those provided, could go to the place stated therein and accurately locate the land.

Jacobsen, supra, 202 P.2d at 721.

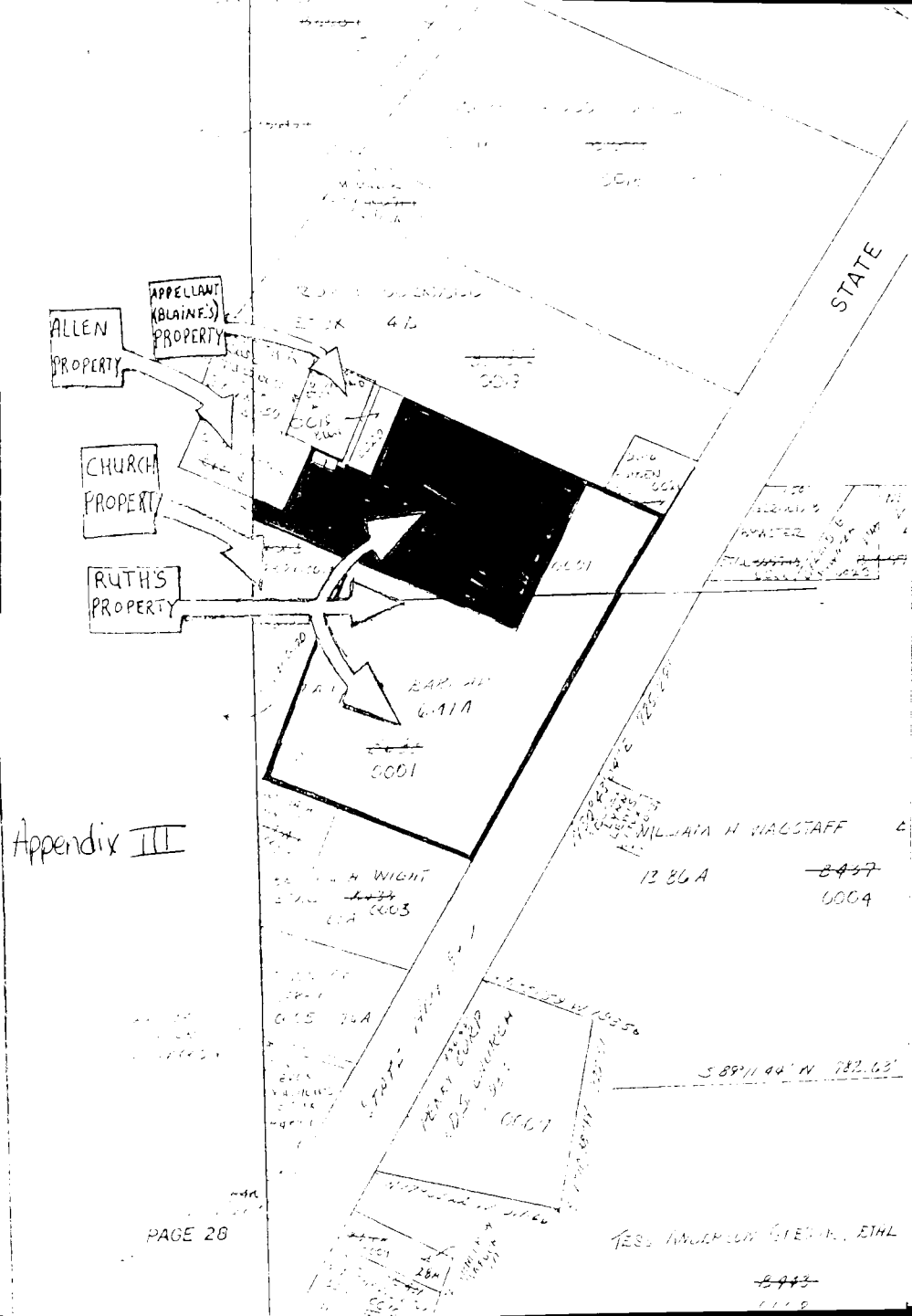
Certainly, even if the agreement here was in writing, could it not be claimed that a surveyor could go to the northwest corner of Ruth's land and state where the boundries of the two acre parcel would fall. Had the agreement been for all of the land owned by Ruth the results would have been differrent since


ALLEN PROPERTY
APPELLANT (BLAINE'S) PROPERTY
CHURCH PROPERTY
RUTH'S PROPERTY
STATE

Appendix I


ALLEN PROPERTY
APPELLANT (BLAINE'S) PROPERTY
CHURCH PROPERTY
RUTH'S PROPERTY
STATE

Appendix II



Appendix III