1983

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

IN THE SUPREME COURT OF THE STATE OF UTAH

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

REPLY BRIEF OF APPELLANT

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

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David R. Daines, Esq.
Christopher L. Daines, Esq.
DAINES & SMITH
108 North Main, Suite 208
Logan, Utah 84321

Attorneys for Plaintiff and Appellant

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

Attorney for Defendants and Respondents

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Christopher L. Daines, Esq.
DAINES & SMITH
[illegible] North Main, Suite 208
Logan, Utah 84321

Attorneys for Plaintiff and Appellant

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

Attorney for Defendants and Respondents

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REPLY BRIEF OF APPELLANT

* * * * *

STATEMENT OF FACTS

Appellant agrees with the amplification on the statement of facts contained in the first two paragraphs of Respondents' Statement of Facts. As to the last paragraph of Respondents' statement, however, Appellant refers the Court to the lower court's "findings of fact" (P. 84), which reads in pertinent part as follows:

"That the oral agreement was lacking in the indications where the boundaries of the two acres would be that the north fields that said property was to border on Plaintiff's land, the Allen land and the Church land's north boundary. That there are no other indications where the remaining boundaries would be, specifically there is no indication where the [illegible] was to be located (P. 84).

ARGUMENT

POINT I. THE TRIAL COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF RULES OF LAW AND EQUITY.

Respondents' first point is based on the premise that Appellant must show the trial court abused its discretion before a reversal would be justified. Appellant accepts this premise and will show in Point II that the trial court's discretion was abused. Respondents further assert that since the trial court's findings were supported by the record, no abuse of discretion has been shown, and a reversal is therefore unwarranted.

Appellant's claim for reversal is not based on an abuse of discretion with regard to fact finding. Instead, Appellant asserts that the trial court abused its discretion in incorrectly interpreting and applying legal and equitable principles to the facts he found. In other words, Appellant takes no exception to the trial court's factual determinations but relies on the failure of the trial court to arrive at a just and equitable judgment based on those facts. Furthermore, the scope of review is broad, as stated at page 3 of Appellant's Brief, and this Court is not bound by the trial court's interpretation of the law.

In this exercise, it is important to [illegible] factual questions [illegible]

following propositions: that the parties had an oral agreement; that the parties specified three of the parcel's boundaries (Plaintiff's land, the Allen land and the Church land's north boundary); and that the parties failed to specifically fix the eastern boundary of the parcel to be sold. The trial court went on to say ". . .the Court cannot tell what the boundaries of the land was agreed to be and the Court cannot define the boundaries thereof. . ." (R. 87). This is properly classified as a conclusion of law, and it is precisely this failure of the Court to exercise its powers and do equity which constitutes reversable error.

Point I of Respondent's brief is well taken but inapplicable in this case because Appellant is not claiming an error on the trial court's part with regard to its factual determinations. Had a factual error been the basis of this appeal, Appellant would have made the entire record below part of the record on appeal, rather than appealing from the Findings of Fact, Conclusions of Law and Judgment, as it did.

POINT II. UNDER APPLICABLE RULES OF LAW AND EQUITY, THE PARCEL WAS SUFFICIENTLY DESCRIBED SO AS TO RENDER THE CONTRACT ENFORCEABLE.

Respondent begins their main point by quoting from Reed v. _____, Utah, ___ P.2d 1374, 1377 (1980), where the standard of proof is required for specific performance is set forth as follows:

> ". . .the terms of the agreement must be reasonably [illegible] so the parties know what is required of them, and [illegible] enough that the courts can delineate the intent of [illegible] contracting parties."

Where Appellant and Respondents obviously differ [illegible] the above standard but in defining how certain "reasonably certain" is and how definite "definite enough" is. Aside from defining general standards, the Reed case and others cited [illegible] both parties can be used only as general helps in resolving th[illegible] specific case. In other words, this case must be decided on [illegible] own merits, as were each of the others cited herein.

Respondents emphasize that the contract under consideration is oral rather than written and ask the Court to place on Appellant a burden to show the contract by clear, convincing and definite evidence. See heading to Point II, Respondents' Brief. Although Appellant had such a burden in the proceedings below, it is not here required to "establish the contract by clear, convincing and definite evidence," [illegible] trial court found that Appellant met its burden to establish [illegible] oral agreement:

> "That on or about the 25th day of [illegible], [illegible] and Defendant Ruth D. [illegible] [illegible] wherein Plaintiff agreed [illegible] land owned by Defendant [illegible]"

Appellant met its burden of establishing "the contract by clear, convincing and definite evidence" (See Resp. Brief p. 7), to the satisfaction of the trial court.

The citations used by Respondents deal principally with statute of frauds issues, and in any case, affirmatively support Appellant's position.

In Montgomery v. Berrett, 121 P.2d 569 (Utah, 1912), the Court upheld the trial judge's determination that "no contract to trade was ever entered into" on the basis of conflicting evidence regarding the existence of the contract. In the more recent case of Ryan v. Earl, Utah, 619 P.2d 54 (1980), this court upheld the trial court's determination that an oral contract met the requirements of the statute of frauds. Likewise Holmgren Brothers, Inc. v. Ballard, Utah, 534 P.2d 611 (1975) dealt with the question whether the oral contract met the statute of frauds requirements. The Court, in Holmgren reversed the trial court's determination that a contract existed:

> "When Plaintiff refused to accept the proffered conveyance. . .that contract came to an end. No new offers were made, and the record is devoid of any evidence to show the Plaintiff and Defendant came to any other kind of understanding."

_____, 534 P.2d at 614.

All of these cases were concerned with establishing the existence of an oral contract by "clear and convincing" proof in a Statute of Frauds context. The trial court in this case found that an oral contract existed. This court must assume said finding was made on the basis of "clear, convincing and definite" evidence of the oral agreement, and that the trial court did not regard the statute of frauds as a problem in so ruling. Respondents' citation to Statute of Frauds cases is misplaced since the trial court found that a contract was entered into between Appellant and Ruth D. Barnard.

The issue facing the Court is not whether the contract was entered into, but rather whether the oral contract found by the Court was sufficiently certain so as to render the contract enforceable considering all of the circumstances of this case. Respondents' arguments and citations support Appellant's [illegible] claim in this regard. On page 6 of their brief (hereinafter "Resp. Br."), Respondents admit:

> "Clearly Appellant cannot show more than <u>the general location</u> of the two acres to be sold, that is, that the property to be sold would be <u>in the north[illegible] portion</u> of the seven acres of land owned by Ruth."

(Emphasis added). In [illegible] <u>[illegible] v.</u> <u>[illegible]</u>, [illegible], [illegible] [illegible]

[illegible] contract [illegible] "[illegible]

terms", including "fenced natural farm ground on the SE. . . . ground SE of the old Highway." See Resp. Br. p. [illegible] (emphasis added). As to Reed v. Alvey, Respondents said the property description of the contract was "in vague and incomplete terms." See Resp. Br. p. 8 (emphasis added). Finally, Respondents assert that the description of land in the Jacobsen v. Cox, Utah, 202 P.2d 714 (1949) case was "in certain, although general terms." Resp. Br. p. 9. Respondents' arguments tacitly admit that there are circumstances in which land to be sold need only be described in general terms.

In the present case, the general terms of description of the property are, as Respondents argue, "the Northwest two acres of Ruth D. Barnard's seven acre lot." This is no less descriptive than "40 acres on the SE of Seller's 400 acre tract." See Staufer v. Call, Utah, 589 P.2d 1219 at 1220, 1221 (1979).

The most revealing and perhaps the most important circumstance which demonstrates the certainty of the contract in the parties' minds is Respondent Ruth Barnard's acceptance of the full purchase price. Appellant asserted in its Brief that this fact alone mandated, under equitable principles, a decree of specific performance. See App. Br. Point II. Respondents failed to address this issue in their brief, thereby conceding that Appellant should be estopped from "wiggling out" of the contract by claiming an ambiguity.

As in the Reed case, "everyone knew" that the two acres was to be located in the Northwest corner of Ruth Barnard's odd-shaped lot. If Ruth did not know where the property she was located, she shouldn't have accepted the purchase money. circumstance of receipt by the seller of the full purchase pr is not a typical one where a contract description deficiency asserted. Usually, some portion of the contract is still executory on the part of the purchaser. The equities of this case demonstrate the trial court's error in refusing to decre specific performance.

Ruth Barnard's bad faith and intent to dishonor her contract are aggravated by the fact that she deeded all of her property to ~~Blaine~~ Barnard prior to the sale to Appellant of t two acre portion. The deed was unrecorded at the time of the sale, and Ruth Barnard did not so much advise Appellant of its existence (R. 17). Although the trial court found the prior was testamentary in nature, and that there was no intent to convey the property to Paul Barnard (R. 33), Respondents maintained that at the time of the sale to Appellant, Ruth was not the owner of any real property (R. 20). In fact, Ruth Barnard sold a remainder interest in the [illegible] Appellant and accepted $6,000 [illegible]. [illegible] prior deed to Paul [illegible] claimed [illegible] title. [illegible]

was too vague. The trial court eliminated her first defense, i.e. that she was not the owner. Now she relies solely on the notion that her contract was too vague to be enforceable as a means of avoiding all obligations under that agreement. This Court should not allow Ruth Barnard to eliminate her obligations under a contract which Appellant fully performed, merely by claiming a deficient description. Equity should not condone Ruth Barnard's behavior by allowing her to escape from her contract on a technicality.

This Court should rule as it did in Tanner v. Baadsgaard, Utah, 612 P.2d 345, 347 (1980):

> "We have no doubt as to the correctness of Defendants' assertion that, in order to warrant specific performance, the essential terms of the contract must be sufficiently definite to enable the parties to understand what their obligtions are. But the proper application of that rule is as a shield to protect from injustice, and not as a weapon with which to work an injustice."

(Emphasis added). Respondents implicitly conceded that the equities of this case call for specific performance, because they failed to contradict or even deal with Appellant's assertions made in Point II of Appellant's Brief.

CONCLUSION

The two acre parcel, although described in general

terms, was sufficiently definite for the trial Court to have awarded specific performance. Aside from the sufficiency of the description, the equities of this case demand that Ruth Barnes be bound by her word and that she not be allowed to escape the consequences of her misdealings with Appellant.

RESPECTFULLY SUBMITTED this 3rd day of November, 1983.

DAINES & SMITH

Christopher L. Daines
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) copies of the foregoing Reply Brief of Appellant this 3rd day of November, 1983, to David B. Havas, HAVAS AND HAVAS, Suite 215 Harrison Boulevard, 3293 Harrison Boulevard, Ogden, Utah 84403.