

1970

**Elaine Siddoway Richards v. Henry Ralph Siddoway, Mary
Siddoway and Ben Morrison : Brief of Plaintiff-Appellant**

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IN THE SUPREME COURT OF THE STATE OF UTAH

ELAINE SIDDOWAY RICHARDS,
Plaintiff and Appellant,

vs.

**HENRY RALPH SIDDOWAY, MARY
SIDDOWAY and BEN MORRISON,**
Defendants and Respondents.

Brief of Plaintiff-Appellant

Appeal from a Judgment of the District Court
District Court In and for Utah County
Honorable Allen B. Screener

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IN THE SUPREME COURT OF THE STATE OF UTAH

ELAINE SIDDOWAY RICHARDS,
Plaintiff and Appellant,

vs.

HENRY RALPH SIDDOWAY, MARY
SIDDOWAY and BEN MORRISON,
Defendants and Respondents.

Case No.
11800

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

Plaintiff is seeking a declaratory judgment quieting title in 20 acres of ground awarded her in a previous judgment.

DISPOSITION IN LOWER COURT

This case was tried to the Court, the Honorable Allen B. Sorensen presiding. From a judgment against her denying her the 20 acres previously awarded her by judgment, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks reversal of the judgment and a judgment in her favor awarding her 20 acres of ground.

STATEMENT OF FACTS

On March 3, 1959 in conjunction with a partition lawsuit, all the parties to that lawsuit including defendants Ralph Siddoway, Mary Siddoway (now Mary D. Journett) and William Wallace Siddoway, now deceased, and plaintiff herein appeared personally in court and stipulated that the 20 acres property disputed in the lawsuit should be awarded to William Wallace Siddoway as to a life estate, and to his daughter, plaintiff-appellant herein, as to the remainder (R. 7 Tr. 3). Findings of Fact, Conclusions of Law and a Judgment and Decree of Partition were entered the same date, and the Judgment was recorded in the County Recorder's Office on May 27, 1959, (R. 7 Tr. 3). William Wallace Siddoway was the father of plaintiff and the husband of defendant Mary Siddoway (Tr. 11 and 22). On November 8, 1961, the property was conveyed by William Wallace Siddoway and his wife Mary Siddoway, to Ben Morrison, defendant herein, now deceased and now represented by his executor. (R. 78). On January 9, 1962, William Wallace Siddoway died. (R. 19). On September 16, 1963, plaintiff commenced this action to quiet title in the property upon termination of William Wallace Siddoway's life estate. (R. 4). Defendants only claim is that a mistake was made in the prior judgment. (R. 56, 64)

ARGUMENT

POINT 1

AS A MATTER OF LAW PLAINTIFF-APPELLANT IS ENTITLED TO A DECREE AWARDING HER THE PROPERTY AND QUIETING TITLE IN HER AS AGAINST ALL DEFENDANTS CLAIMING UNDER WALLACE SIDDOWAY, AND THE TRIAL COURT ERRED IN NOT SO RULING.

Plaintiff and Defendants each claim title through William Wallace Siddoway. When the Judgment giving William Wallace Siddoway a life estate only and the remainder to Plaintiff-Appellant was entered and recorded in 1959, a "Final Disposition" was made concerning the land so far as parties to that lawsuit are concerned or all claiming thereunder. If a mistake was made in that case, our rules provide the method for correction. Rule 60(b) reads as follows:

"(b) Mistakes; Inadvertance; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defen-

dant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A Motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

No timely motion was made in the partition action, and under the cited rule an independent action lies only as follows:

"This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, *or to set aside a judgment for fraud upon the court.* (Emphasis ours.)

It is submitted this sentence means what it says, that is, a judgment can be set aside in an independent action only for fraud.

No fraud is here claimed—only a unilateral mistake. On these facts the court set aside the partition judg-

ment and awarded the property to defendants, basing its ruling on the case of *Haner vs. Haner*, 13 Ut 2d 259, 373 Pac. 2d 577.

In the Haner case a divorced wife sought to set aside the decree based on the husband's *fraud*. The court said, on Page 300 thereof,

"It is sometimes said that when a judgment is attacked collaterally on the ground that it was obtained by fraud or deceit, it will be set aside only for extrinsic fraud, but we are in accord with the indications of the restatement of judgments that this is too limited. It seems more realistic to say that when it appears that the processes of justice have been so completely thwarted or distorted as to persuade the court that in fairness and good conscience the judgment should not be permitted to stand, relief should be granted."

The restatement which the court cites with approval positively declares mistakes such as that claimed here are not sufficient ground for relief. Sec. 126 of the Restatement provides in pertinent part

Sec. 126. "When Equitable Relief is Denied.

(1) Equitable relief from a valid judgment will be granted only in accordance with the rules stated in this Chapter.

(2) Although a judgment is erroneous and inequitable, equitable relief will not be granted to a party thereto on the sole ground that . . .

(c) the judgment was the result of a mistake of law or of fact by the court or by the present complainant or his attorney . . ."

Nothing in the Restatement indicates a contrary intention. No Utah case is located in which a judgment was collaterally set aside for mistake. It is submitted no legal basis exists for the court's ruling in this case.

One good reason why the Restatement Rule is a good rule and the trial court's rule in this case is a bad rule is the mischief the trial court's rule would cause to titles to real property. Suppose plaintiff herein had purchased an owner's title insurance policy on the 20 acres as a result of the partition action. Would she now have a claim because of her loss of title? Is this something an insurer, abstractor or attorney, by any amount of diligence could uncover or guard against?

In conclusion, the summary given in the Restatement, Sec. 126, Comment "a" is persuasive:

"As stated in Paragraph (1), the interests of the public and the litigants require that ordinarily where a final judgment has been rendered, there should be no opportunity to relitigate the same matters. Public policy requires that pressure be brought upon litigants to use great care in preparing cases for trial and in ascertaining all the facts. A rule which would permit the reopening of cases previously decided because of error or ignorance during the progress of the trial would, in a large measure vitiate the effects of the rules of *Res judicata*. Further, there are normally adequate means for the correction of errors during the course of an action. Statutes have widely extended the common law remedies usually with liberal provisions as to the time in which

such proceedings can be brought. The statutes are statutes of repose, and for equity to extend its jurisdiction widely to permit the correction of errors would be contrary to their spirit."

POINT II

DEFENDANTS ARE GUILTY OF LACHES BECAUSE OF DELAY IN REQUESTING CORRECTION OF CLAIMED ERROR.

The decree was entered and recorded in the Recorder's Office of Uintah County by May 1959. William Wallace Siddoway died in January of 1962. This action was commenced in September of 1963. Not until February of 1965 was an answer raising the issue of mistake filed by defendants. Not to this date have defendants filed a proper pleading seeking affirmative relief such as a counter-claim, and paid the statutory fee therefor. The record is ambiguous as to when defendants first learned of the claimed mistake. In any event, they had full notice at the time this complaint was filed. They allowed two and one-half years to pass before even filing and answer. More than ten years have elapsed, and defendants still have not sought proper affirmative relief. Clearly, they have slept on their rights. The law is summarized in 46 AmJur 1005 § 859 on Judgments as follows:

"Freedom from laches is generally regarded as a prerequisite to the granting of equitable relief from judgments, at least with respect to judgments not void on their face, and before a court of equity will intervene in regard to a judgment, it must appear that the applicant has used due dili-

gence in doing whatever lay in his power to protect his interests, and in presenting the matter to the court of equity. An applicant for equitable relief from a judgment must act promptly upon discovering the ground asserted as a basis for the application. In this connection, the lapse of a considerable period of time after the entry of the judgment will usually amount to laches, although a lapse of time alone does not necessarily preclude relief in equity from a judgment.

POINT III

THE EVIDENCE DOES NOT JUSTIFY FINDING OF MISTAKE.

The original decree granting plaintiff a remainder interest in the property involved seven parties, and those seven parties appeared in court and stipulated to the findings. The two parties who had primary interest in the twenty acres were William Wallace Siddoway and Elaine Richards. Plaintiff and her father owned the full interest in the twenty acres in any event. The intention of these two persons is the controlling element in determining whether a mistake was made. William Wallace is now dead. His intent was divined at trial by calling his brother, Ralph, who was an opposing party in the original partition action, as well as in this action, Mary DeJournette, wife of the deceased and opposing party here, John Beaslin, plaintiff's then attorney, and Anna Morrison, Mr. Beaslin's then secretary. Each of these witnesses is incompetent to testify about the dead man's intent. Such evidence of necessity violates the Hearsay Rule, the Dead Man's Statute and the Legal Conclusions

Rule. Plaintiff was not called on to testify by defendants. Her claim and the record must speak for themselves. It is submitted the findings of fact, the conclusions of law and the decree stipulated while all parties were present in the partition action are the best evidence of intent, and the only admissable evidence of intent in this record.

SUMMARY

It is respectfully submitted the ruling of the trial court in this case is patent error, should be reversed and plaintiff-appellant should be granted judgment quieting title in her to the 20 disputed acres.

Respectfully submitted,

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