

2004

H.C. Massey, Betty Massey v. Kenneth A. Griffiths,
BKB, L.L.C., 12 x 12 L.L.C., Aaron B. Buttars,
Brenda L. Buttars, Adele B. Lewis : Brief of Appellee

Utah Court of Appeals

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Frank S. Warner; Warner Law Firm; Attorneys for Appellants H.S. Massey and Betty Massey; M. Darin Hammond; Smith Knowles & Hammond; Attorney for Appelles Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis.

Ray G. Martineau; Anthony R. Martineau; Brett D. Cragun; Attorneys for Appellees Kenneth A. Griffiths, BKB, L.L.C., and 12 X 12, L.L.C..

Recommended Citation

Brief of Appellee, *H.C. Massey, Betty Massey v. Kenneth A. Griffiths, BKB, L.L.C., 12 x 12 L.L.C., Aaron B. Buttars, Brenda L. Buttars, Adele B. Lewis*, No. 20040650 (Utah Court of Appeals, 2004).
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H.C. MASSEY and BETTY MASSEY,)	
)	
Appellants,)	
)	
vs.)	Appeal No. 20040650-CA
)	
KENNETH A. GRIFFITHS, BKB, L.L.C.,)	
12 X 12, L.L.C., AARON B. BUTTARS,)	
BRENDA L. BUTTARS, ADELE B.)	
LEWIS,)	
)	
Appellees.)	Civil No. 960900027
)	Judge Roger S. Dutson
)	

APPEAL FROM THE SECOND DISTRICT COURT IN AND FOR WEBER
COUNTY, STATE OF UTAH, HONORABLE ROGER S. DUTSON

Ray G. Martineau
Anthony R. Martineau
Brett D. Cragun
3098 Highland Dr., Suite 450
Salt Lake City, UT 84106
*Attorneys for Appellees Kenneth A. Griffiths,
BKB, L.L.C. and 12 X 12, L.L.C.*

Douglas L. Stowell
Lloyd R. Jones
STOWELL & ASSOICATES, PLLC
307 East Stanton Ave.
Salt Lake City, UT 84111
*Attorneys for Appellees Kenneth A. Griffiths,
BKB, L.L.C. and 12 X 12, L.L.C.*

APR 14 2005

ORAL ARGUMENT AND PUBLISHED DECISION IS REQUESTED

IN THE UTAH COURT OF APPEALS	
H.C. MASSEY and BETTY MASSEY,)
)
Appellants,)
)
vs.)
)
KENNETH A. GRIFFITHS, BKB, L.L.C.,)
12 X 12, L.L.C., AARON B. BUTTARS,)
BRENDA L. BUTTARS, ADELE B.)
LEWIS,)
)
Appellees.)
)
)

**APPEAL FROM THE SECOND DISTRICT COURT IN AND FOR WEBER
COUNTY, STATE OF UTAH, HONORABLE ROGER S. DUTSON**

M. Darin Hammond
SMITH KNOWLES & HAMMOND
4723 Harrison Blvd., Suite 200
Ogden, UT 84403
*Attorney for Appelles Aaron B. Buttars,
Brenda L. Buttars and Adele B. Lewis*

Douglas L. Stowell
Lloyd R. Jones
STOWELL & ASSOICATES, PLLC
307 East Stanton Ave.
Salt Lake City, UT 84111
*Attorneys for Appellees Kenneth A. Griffiths,
BKB, L.L.C. and 12 X 12, L.L.C.*

ORAL ARGUMENT AND PUBLISHED DECISION IS REQUESTED

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
DESIGNATION OF THE PARTIES	1
STATEMENT SHOWING JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW (Including Standards of appellate review and supporting authority)	1
RULES WHICH ARE DETERMINATIVE AND OF CENTRAL IMPORTANCE TO THE APPEAL	2
STATEMENT OF THE CASE (Nature of the Case, Course Of Proceedings, And Disposition Below).	2
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	4
ARGUMENT	5
Validity Of Tax Sale	10
Lack Of Due Process	7
Findings Of Fact	8
CONCLUSION	9
ADDENDUM: Not Provided Pursuant To Rule 24(b)(2), Utah Rules Of Appellate Procedure.	

TABLE OF AUTHORITIES

Cases

<i>Brigham Young University v. Tremco Consultants, Inc.</i> , 2005 UT 19, ¶13.	2
<i>Hayes v. Gibbs</i> , 169 P.2d 781, 786 (Utah 1946).	6
<i>Holmes v. Judge</i> , 31 Utah 269, 87 P. 1009, 1014 (1906).	7
<i>Mason v. Loveless</i> , 2001 UT App. 145, 24 P.3d 997 (Utah Ct. App. 2001)	7
<i>Prince v. Bear River Mut. Ins. Co.</i> , 2002 UT 68, ¶ 14, 56 P.3d 524 (Utah 2002)	1
<i>Thirteenth South Ltd. v. Summit Village Inc.</i> , 866 P.2d 257, 259 (Nev. 1993)	6
<i>Tintic Undine Mining Co. v. Ercanbrack</i> , 74 P.2d 1184, 1189 (Utah 1938)	6

Statutes and Rules

Rule 56(c), Utah Rules Of Civil Procedure	1
Utah Code Annotated §57-3-21(1).	6

DESIGNATION OF PARTIES

Pursuant to Rule 24(d), Utah Rules Of Appellate Procedure, appellants H.C. Massey and Betty P. Massey, will collectively be referred to herein as “Masseys” the appellees Kenneth A. Griffiths, BKB, L.L.C., and 12 x 12, L.L.C., will collectively be referred to herein as “Griffiths’ Parties,” and appellees Aaron B. Buttars, Brenda L. Buttars, and Adele B. Lewis, will collectively be referred to herein as “Buttars’ Parties.”

STATEMENT SHOWING JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2(3)(j).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(Including standards of appellate review and supporting authority.)

ISSUE ON APPEAL: WHETHER BASED UPON THE TRIAL COURT’S LEGAL CONCLUSIONS IN ITS RULING CONDITIONALLY DENYING SUMMARY JUDGMENT, AND THE FACTS STIPULATED TO BY APPELLANTS’ COUNSEL, THE COURT PROPERLY ENTERED ITS ORDER QUIETING TITLE IN APPELLEES’ NAMES?

Applicable Standard of Appellate Review: Summary judgment is appropriate when there are no genuine issues of material fact and "the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). Appellate courts review the [district] court's order granting . . . summary judgment for correctness and accord no deference to the [district] court's legal conclusions." *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 14, 56 P.3d 524. In addition, appellate courts view the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Id.* (internal

quotations omitted). See also, *Brigham Young University v. Tremco Consultants, Inc.*, 2005 UT 19, ¶13.

Preservation of Issue: The above stated issue was preserved for appeal by the following: Ruling Conditionally Denying Summary Judgment (R. 962-967); Video Transcript from hearing on February 24, 2004 (R. 1014); Findings Of Fact And Conclusions Of Law (R. 984-994); Order Quieting Title To Real Property in 12 x 12, L.L.C. And In Aaron B. Buttars And Brenda L. Buttars (R. 995-999).

RULES WHICH ARE DETERMINATIVE AND OF CENTRAL IMPORTANCE TO THE APPEAL

Utah Rules Of Civil Procedure, Rule 56(c). Summary judgment.

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

STATEMENT OF THE CASE

Nature of the Case, Course Of Proceedings, And Disposition Below

This case involved an action by the Masseys for quiet title, trespass and waste to real property (“disputed property”) which was owned and occupied by the appellees and their predecessors in interest at all material times herein. The Masseys claim to the disputed property was founded upon certain tax deeds (“Tax Deeds”) which they acquired from Weber County.

Prior to the scheduled trial of the case, the appellees filed motions for summary judgment. The Massey's opposed these motions. Based upon these motions, the trial court entered its Ruling Conditionally Denying Summary Judgment ("Conditional Ruling"), a copy of which is included in the Addendum attached to the Brief Of Appellants. The Conditional Ruling in essence set forth the trial court's legal conclusions and outlined certain facts that would need to be established for the Masseys to prevail at trial.

Following the trial court's issuance of its Conditional Ruling, the parties participated in a telephone conference with the trial court. During the course of that telephone conference, the Masseys' counsel made certain admissions and stipulations as to facts of the case. The parties and the trial court determined that these admissions and stipulations, when combined with the trial court's legal conclusions contained in its Conditional Ruling, effectively disposed of the case.

Although the conclusions reached in the telephone conference disposed of the Masseys' claims, finalization of the boundary lines between the appellees' property needed to be addressed. It was determined that the trial court would enter Findings Of Fact and Conclusions Of Law along with an order which formalized the boundary lines between the appellees' parcels of property. After the findings, conclusions and order were entered, appellants filed this appeal. No objections were filed by Masseys to the findings, conclusions and order.

STATEMENT OF FACTS

1. The Masseys received four tax deeds from Weber County. Two of the tax deeds were conveyed on June 12, 1986 and the other two tax deeds were conveyed on June 8, 1992. (R. 989-991) The property purportedly conveyed by the tax deeds is the disputed property which is involved in this matter.

2. The disputed property was occupied in its entirety by the appellees and their predecessors in interest at all material times herein, and the appellees and their predecessors in interest paid their property taxes related to the disputed property at all material times herein. (R. 1014)

SUMMARY OF ARGUMENT

The issue in this case is whether the trial court correctly entered its order quieting title in favor of the appellees in this matter. The Masseys contend the trial court erred because the Masseys were entitled to ownership of the disputed property by virtue of the Tax Deeds they received from Weber County. It is uncontested, however, that appellees and their predecessors in interest occupied the disputed property up to and including certain boundary lines that have existed at all material times herein. The occupation by the appellees and their predecessors in interest existed both before and after the Tax Deeds were issued. Moreover, there is also no dispute that appellees and their predecessors in interest have paid their property taxes related to the disputed property in connection with the tax notices they regularly received from Weber County, which tax notices covered the disputed real property legally described in the county records, including, at the very least, the most substantial portion of the disputed property.

Based upon the concessions of Masseys' counsel, the trial court determined that the disputed property had been occupied in its entirety by appellees and their predecessors in interest for over twenty years. The trial court further determined that appellees and their predecessors in interest had paid the property taxes on the disputed property as described in their recorded deeds and in the related tax notices, and that to the extent the appellees had occupied land that was not part of the deeds' legal descriptions, that such land should be included as part as appellees' property pursuant to the legal doctrine of boundary by acquiescence.

Accordingly, the trial court concluded, "If Weber County issues tax deeds on property upon which taxes have always been paid on record title and which boundaries have been changed from the recorded title by the concept of boundaries by acquiescence, then those tax deeds on such property are null and void as to any person now holding an otherwise legitimate title by recorded conveyance, including the modified boundary by acquiescence." (R. 964) The trial court's position is well founded.

ARGUMENT

Validity Of Tax Sale

The issue in this case is whether the trial court correctly entered its order quieting title in favor of the appellees in this matter. The Masseys essentially argue that the tax sales extinguished all prior ownership claims to the disputed property, and that tax titles are entitled to a high degree of protection under Utah law. The Masseys' argument assumes, however, that the tax sales were valid in the first place.

At a telephone conference which was held in this matter on February 24, 2004, the Masseys' counsel stated, "Let me say, your honor, that I do not have any evidence that would suggest that the [appellees] have not paid taxes on the tax notices that have been sent to them over the years, nor do I have any evidence that there is any parcel of property at issue here that hasn't been occupied by the [appellees] over the years." (R. 1014 at pgs. 3-4)

Under Utah law and other relevant law, lawful tax sale proceedings can only be based upon a failure to pay the taxes assessed against the property sold, and no validity attaches to any tax sale concerning property for which the taxes have been paid and that never became delinquent. *Tintic Undine Mining Co. v. Ercanbrack*, 74 P.2d 1184, 1189 (Utah 1938); *Hayes v. Gibbs*, 169 P.2d 781, 786 (Utah 1946); *Thirteenth South Ltd. v. Summit Village Inc.*, 866 P.2d 257, 259 (Nev. 1993). Utah law further provides that a person claiming title to real property by reason of a tax deed is chargeable with notice of and takes subject to the full record chain of title. *Hayes*, *supra*, at 784; Utah Recording Act, UCA § 57-3-21(1).

Appellants have conceded that taxes were paid by appellees and their predecessors in interest on the most substantial portion of the disputed property legally described in appellees' deeds, however, appellants have raised an issue as to whether the legal descriptions set forth in the record title documents fully describe all of the disputed property. The trial court, however, has properly resolved this issue by its application of the legal doctrine of boundary by acquiescence.

Boundary by acquiescence is a long established doctrine in Utah. *Holmes v. Judge*, 31 Utah 269, 87 P. 1009, 1014 (1906). In *Mason v. Loveless*, 2001 UT App. 145, 24 P.3d 997 (Utah Ct. App. 2001), this Court evaluated the doctrine of boundary by acquiescence in the tax deed context, and rejected the argument that appellants make here that purchasers of tax deeds take their property free and clear of acquiesced boundary lines. After noting that "easements and restrictive covenants survive a tax sale," because a property owner does not hold title to or pay taxes on an easement, this Court in *Mason* held:

That same analysis applies to the present case. Here, the trial court found that a boundary by acquiescence claim was established as early as 1949, and Tax Deed Defendants' predecessors in interest became owners of the adjoining land much later. Accordingly, Tax Deed Defendants' tax deeds did not extinguish the preexisting boundary by acquiescence claim. To hold otherwise would contravene the Fifth Amendment's protection against taking of property without due process of law... *Accordingly, Tax Deed Defendants' deed did not convey title free and clear of the preexisting boundary by acquiescence, and the trial court properly granted summary judgment. . .* (emphasis added.)

Id. at 1003.

It is clear that all taxes assessed against appellees' property were paid and were never delinquent. Weber County therefore had nothing to sell or convey to appellants by means of the Tax Deeds. As such, a tax sale concerning the disputed property was neither appropriate nor valid. The trial court's ruling was correct.

Lack Of Due Process

The Masseys' assertions that appellees had notice of the Masseys' claims to the disputed property are not true. There are no facts or evidence establishing that appellees were provided with any actual or constructive notice that their real property was subject,

in whole or in part, to the county's erroneous tax foreclosure. In fact, new parcel numbers were assigned by Weber County to the portions of the disputed property described in the Tax Deeds.

Because new parcel numbers were assigned, a parcel number search in the county records would not and did not reveal any conflict. Any and all subsequent conveyances and tax notices were simply based on the distinct parcel numbers, with no indication provided or available to appellees that any potential conflict existed or that a tax sale had even occurred.

The appellees had no notice or knowledge of the Masseys' claim to the disputed property or that their property ownership was being subjected to a tax dispute or an erroneous sale. When this lack of notice is combined with the appellees' consistent occupancy and use of the disputed property, it would be a violation of the appellees' due process rights to hold that the subject tax sales divested them of their ownership, especially where appellees had no notice or opportunity to be heard.

Findings Of Fact

The Masseys argue that the trial court's Findings Of Fact are inappropriate and not supported by the record. As a threshold matter, it should be noted that the record contains no objection by the Masseys to the findings of fact. Had the Masseys properly objected to the proposed findings, the objection should have been made at the trial level instead of being raised here for the first time on appeal.

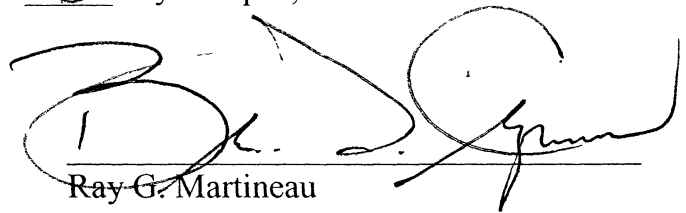
Additionally, given the trial court's disposition of the matter, it is unclear how the Masseys' objections which are set forth in the Brief Of Appellants H.C. And Betty

Massey are relevant to the issues raised in this appeal (i.e. that the disposition of this matter was not appropriate). Moreover, a major purpose of the findings of fact was to alleviate the potential for any future boundary line disagreements as between the Griffiths Parties and the Buttars Parties. (R. 1014 at pgs. 17-20) Given that the objection to the findings was not first raised until this appeal, that the objection does not raise relevant issues as to the disposition of this matter, and that the primary purpose of the findings was to resolve all potential issues as between the appellees in this matter (as opposed to the Masseys), the Masseys' objection is without merit.

CONCLUSION

Based upon the foregoing facts and legal authority, the trial court ruled properly and prudently on all matters before it. Its ruling should be affirmed without exception.

RESPECTFULLY SUBMITTED this 13 day of April, 2005.

A handwritten signature in black ink, appearing to be "Ray G. Martineau", written over a horizontal line.

Ray G. Martineau

Anthony R. Martineau

Brett D. Cragun

Douglas L. Stowell

Lloyd R. Jones

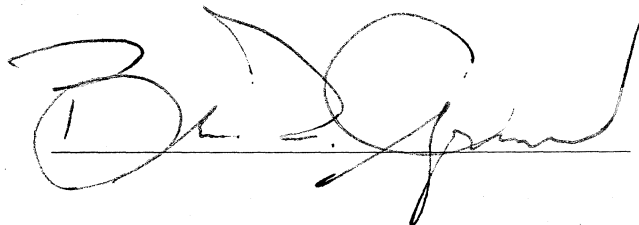
Attorneys For Appellees Kenneth A.
Griffiths, BKB, L.L.C. and 12 X 12,
L.L.C.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing BRIEF OF APPELLEES KENNETH A. GRIFFITHS, BKB, L.L.C., AND 12 X 12, L.L.C. was served upon the following individuals by mailing a copy thereof, postage prepaid, to said individuals at the following address this 13 day of April, 2005.

Frank S. Warner
3564 Lincoln Ave, Suite 6
Ogden, UT 84401

M. Darin Hammond
SMITH KNOWLES & HAMMOND, PC
4723 Harrison Blvd, Suite 200
Ogden, UT 84403

A handwritten signature in black ink, appearing to read "Darin Hammond", written over a horizontal line.