

2004

H.C. Massey and Betty Massey v. Kenneth A. Griffiths, BKB LLC, 12 X 12 LLC, Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS, STATE OF UTAH

H.C. MASSEY and BETTY MASSEY,

Appellants,

vs.

KENNETH A. GRIFFITHS, BKB LLC,
12 X 12 L.L.C., AARON B. BUTTARS,
BRENDA L. BUTTARS, ADELE B.
LEWIS,

Appellees.

**REPLY BRIEF OF
APPELLANTS H.C.
AND BETTY MASSEY**

Appellate Court No. 20040650-CA

Appeal from the Ruling of the Second District Court
The Honorable Roger S. Dutson
Granting Motion for Summary Judgment

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UTAH APPELLATE COURTS

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ARGUMENT

I. The Griffiths Appellees due process argument is not based upon any facts in the record and is legally deficient.

The Griffiths Parties argue that new parcel numbers were assigned by Weber County to the portions of the disputed property described in the tax deeds. They argue that therefore they would not be able to ascertain from a search of the Weber County Recorder's Office that Masseys claimed title under their tax deeds to the property Griffiths contemplated purchasing and Griffiths therefore had no notice of Masseys' claim to the disputed property. This entire argument is made without any reference to the record or to controlling authority.

The law does not require County Recorders to index property by parcel number. See Utah Code § 17-21-6. To demonstrate the absurdity of Griffiths' argument, two plat maps from the Weber County Recorder's Office are appended hereto as addendum No. one, showing the location of the Massey tax deeds, both before the tax sale or the purchase of the Griffiths Parties, and following the tax sale and the purchase of the Griffiths Parties. Contrary to their unsupported allegation that they had no way to obtain notice, a simple review of the plat map in the County Recorders Office would have provided the same.

There is nothing in the record or in the argument of the Griffiths Parties that supports their position regarding parcel numbers.

II. Appellees reliance upon precedent is not persuasive.

Appellees rely upon two Utah cases, *Tintic Undine Mining Co. v. Ercanbrack*, 74 P.2d 1184 (Utah 1938) and *Hayes v. Gibbs*, 169 P.2d 781 (Utah 1946). *Ercanbrack* dealt with title to Mining claims, not fee title. In that case the Court relied upon the rule of “strictissimi juris” in construing the tax sale proceedings and statutes. As pointed out in Masseys’ opening brief, strict construction of tax sale proceedings and statutes is no longer the law in Utah, if it ever was. See Brief for Appellants at 7-10.

Hayes v. Gibbs is distinguished from the present case in that it dealt with the issue of whether tax sales extinguish covenants, conditions and restrictions (CC&R’s). It likened CC&R’s to easements and held that like easements, CC&R’s are not extinguished by tax sale proceedings. The Court’s holding was based upon the theory that only the servient estate is assessed and taxed, and hence subject to sale. *Hayes v. Gibbs* at 786-88. That is not at issue in the present case.

The Nevada case cited by and relied upon by all Appellees, *Thirteen South Ltd. v. Summit Village Inc.*, 866 P.2d 257 (Nev. 1993) also deals with CC&R’s and cites *Hayes v. Gibbs* as one of the persuasive authorities for its holding. *Thirteen South Ltd.* is of little assistance to the analysis of the issues in the present case.

Both groups of Appellees rely upon *Mason v. Loveless*, 24 P.3d 997 (Utah App. 2001) for the proposition that boundaries established by acquiescence control for purposes of tax sale proceedings. The Buttars parties go so far as to cite *Mason v. Loveless* as holding that “purchasers of Tax Deeds take title subject to and along with all of the infirmities of the prior owner.” Brief of Buttars Parties at 10. That assertion is not supported by the courts two paragraphs dealing with the tax deed issue. *Mason v. Loveless* does not deal with the issue of subsequent purchasers taking subject to constructive notice of the recorded tax deed titles. Nor does it deal with the proposition that a litigant may only assert his own constitutional rights or immunities and has no standing to assert a third-party’s constitutional rights. See Brief of Appellants at 11. Thus *Mason v. Loveless* is not dispositive of the issues in the present case.

III. The record below does not support Appellees’ assertion that the tax deeds are void and of no legal effect to convey title to Masseys.

Paragraphs 8, 10 and 11 of the Statement of Facts in the brief of the Buttars Parties state as facts numerous items that are not undisputed facts before this court. The Buttars Parties allege that “an expert surveyor has concluded that Weber County did not have any interest in the property to be conveyed at the tax sale and that the deeds to property allegedly conveyed were based on a conveyance made by an earlier grantor possessing no interest in the real property to be conveyed.”

Brief of Buttars Parties at 5. This statement is inaccurate in at least two regards. First, it has not been established that Weber County “did not have any interest in the property to be conveyed.” The legal opinion of Appellees surveyor in an affidavit appended to their brief below is insufficient for that purpose. The allegation that the tax deeds were “based on a conveyance made by an earlier grantor possessing no interest in the real property to be conveyed” was disputed by Masseys’ expert and was formally disputed by Masseys in their brief in opposition to the motion for summary judgment. R. at 821-22. The statements of Ms. Segriff quoted in paragraph 10 are not statements of undisputed facts and are explained and disputed in Masseys’ brief below. R. at 820-21. Likewise, defendants allegation contained in paragraph 11 are misstatements of undisputed facts and were disputed by Masseys below. R. at 821-22.

There is nothing in the record regarding the procedure by which Weber County arrived at holding tax title to the property in question and conveying it to Masseys. The tax sale proceedings and tax deeds are entitled to a presumption of regularity. See Utah Code Ann. §§ 59-2-1351.1 (9)(b) and 59-2-1362.

IV. The Buttars Appellees’ reliance upon *Salt Lake County v. Metro West Ready Mix Inc.* is misplaced.

The Buttars Appellees spend a substantial portion of their brief arguing the application of *Salt Lake County v. Metro West Ready Mix Inc.*, 89 P.3d 155 (Utah

2004) to the fact situation in the present case. Masseys have no argument with *Metro West*. In fact *Metro West* supports Masseys' position that Appellees are bound by the recording statutes and that their interests are subject to the interest of Masseys under their tax deeds. This is because Masseys' deeds are not "wild deeds" but are from the sovereign and they take "new and complete title in the land, under an independent grant from the sovereign authority, which bars or extinguishes all prior titles and encumbrances of private persons, and all equity arising out of them." *Hanson v. Burris*, 46 P.2d 400, 406 (Utah 1935) (citations omitted); *accord, A.C. Financial, Inc. v. Salt Lake County*, 948 P.2d 771 (Utah 1997); *Buchanan v. Hansen*, 820 P.2d 908, 910 (Utah 1991); *Tuft v. Federal Leasing*, 657 P. 2d 1300, 1303 (Utah 1982).

V. Public Policy favors a high degree of protection for tax deeds and will be furthered by reversing the lower Courts decision.

Appellees suggest that Appellant has collected random comments from Utah Case Law concerning tax deeds and their sanctity. Masseys suggest that these are not mere random comments, but express the public policy of this State. Public policy should not favor grantees taking title to real property without finding what was clearly of record to be found: Masseys' tax deeds. They were not deprived of their property by due process. The tax deeds were of record and their conflicting legal descriptions were there to be found.

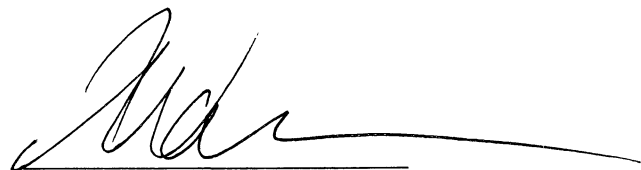
**VI. Appellants are not required to object to the trial court's Findings of Fact,
Conclusions of Law and Judgment.**

Appellees argue that Appellants cannot question the lower court's findings, conclusions and judgment, because Appellants failed to object to the same. Appellees cite no authority for their proposition and Appellants know of none.

CONCLUSION

To assure the governments ability to raise revenue by levying and collecting taxes on real property, Utah law strongly favors the stability and priority of tax titles. Indeed a tax title is a new title issued by the sovereign. The defendants in this case, who all acquired their interests by conveyances dated after the recording of Masseys tax titles, took subject to those titles. The Defendants have failed to carry their burden of demonstrating how undisputed material facts and the law support their motions for summary judgment. The trial court erred in granting those motions. The trial court's Findings of Fact should be stricken and its Conclusions of Law and Judgment reversed. The matter should be remanded to the trial court for further scheduling and trial.

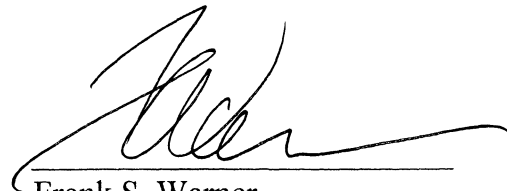
DATED this 1ST day of June, 2005.



Frank S. Warner
Attorney for Appellants

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 5th day of June, 2005, I served a copy of the foregoing Brief to Attorneys for Appellees Kenneth a Griffiths and BKB, L.L.C. and 12 X 12, L.L.C., Douglas L. Stowell and Ray G. Martineau and Attorney for Appellees Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis, Attorney M. Darin Hammond and by mailing it first class mail with sufficient postage prepaid to the following addresses: Stowell & Associates, PLLC, 307 East Stanton Avenue, Salt Lake City, Utah, 84111; 3098 South Highland Drive, Suite 450, Salt Lake City, Utah, 84106; Smith Knowles & Hammond PC, 4723 Harrison Blvd., Suite 200, Ogden, Utah 84403.



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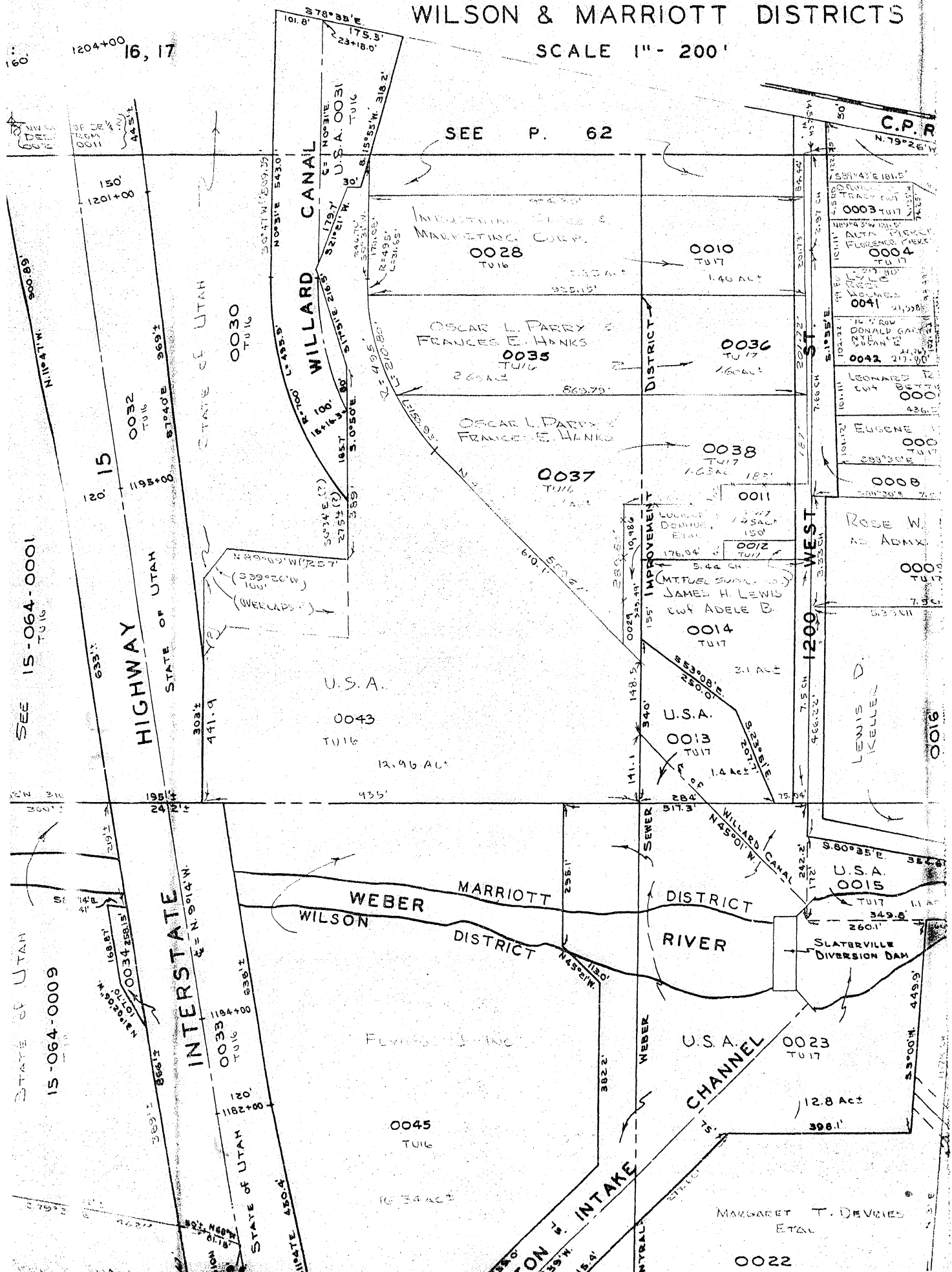
ADDENDUM

1. WEBER COUNTY RECORDER PLAT.

Tab 1

WILSON & MARRIOTT DISTRICTS

SCALE 1" - 200'



S.E. 1/4

SECTION 24, T.6N., R.2W., S.L.B. &

WILSON & MARRIOTT DISTRICTS &

WEST HAVEN CITY

SCALE 1" = 200'

