

1994

Crowther v. Mower : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DEAN W. CROWTHER,

Plaintiff-Appellee

vs.

BRYAN MOWER,

Defendant-Appellant

Utah Court of Appeals # 940228-CA

District Court #920905365

Appellant's Reply To

BRIEF OF APPELLEE

Statement of the Issues:

1. Whether Appellee has effectively defended the position that the court erred by granting Appellee's motion for summary judgment when, as a matter of law, a court of appeals may reconsider the trial court's legal conclusions and whether Appellee has defended that the trial court erred by summarily ruling that a deed not recorded by grantee does not convey to the grantee that grantor's ownership interest in the property that is the subject of the deed, and does not destroy a joint tenancy with right of survivorship until the deed is recorded.

Statement of Case

In Appellee's statement of the case in his brief, page 2, he made reference to that fact that Judge Lewis' Findings of Fact and Conclusions of Law were based upon uncontroverted facts and that the case used as a paramount case in this issue (Crowther v. Mower Utah App. 1994) was "distinguishable" or different from the Salt Lake case. It is the contention of this reply that Judge Lewis in her Findings of Fact and Conclusions of Law, did not provide one case or statute for her decision. In addition, the Summit County case used in Appellant's brief is identical to the case at hand since both deeds were delivered and conveyed at the exact same time. The Utah Court of Appeals should use the same rational and opinion in this case as was used in the Summit County case.

Detail of Argument

Summary Judgment Can Be Reversed By Court of Appeals and That the Deed was Executed with Intent and Recording is Irrelevant to Conveyance of Property

It was mentioned in Appellee's brief (page 4) that "Appellant has not met the marshalling requirements in order to challenge the findings in the Court." Appellant not only met the requirements to challenge the ruling, he provided state statutes and case law defending the position. In fact, the primary case for Judge Lewis' decision (Baker v. Pattee, 684 p.2nd 632, 635 (Utah 1984) was one of the primary cases used in the Court of Appeals decision in the Summit County Companion Case. Baker was used as a case to prove that a

conveyance is valid when the grantor, with present intent to convey, delivers the deed. The court, using this case stated in *Crowther v. Mower* that: "The language of the quit claim deed supports a conclusion that the quit claim deed is unambiguous as a matter of law...The evidence is uncontroverted that at the time Mrs. Crowther had the deed delivered, she had the present intent to convey the property." There was no "erroneous standard of review" as indicated in the Appellee's brief. The law is clear that a valid conveyance itself destroys the joint tenancy, and a joint tenant need not notify the other tenant or record the conveyance. See *Burke v. Stevens*, 70 Cal. Rptr. 87, 90-91 (Cal App. 1968) (It is not necessary in connection with the execution of such a deed that there should be notification to the other joint tenant and unnecessary that the deed be recorded; neither acknowledgment or recordation is necessary.") ; 48A C.J.S. Joint Tenancy 17 at 345.

The courts have stated that "if a contract is in writing and the language is not ambiguous, the intention of the parties must be determined from the words of the agreement." *Winegar v. Froerer Corp.*, 813 P.2nd at 108. "A Court may only consider extrinsic evidence if, after careful consideration, the contract language is ambiguous or uncertain." *Id.* Neither the appellee or the appellant claims the language is ambiguous. Moreover, the language of Mrs. Crowther's codicil supports Mrs. Crowther's intent to convey. The deed became operative upon conveyance and not when recorded as indicated in appellee's argument.

Utah 's recording laws "do not make recordation a prerequisite to the validity of a deed." *Gregerson v. Jensen*, 669 P.2nd 396, 398 (Utah 1983) The fact that such a deed is not recorded or that recording is delayed "does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document." Utah

Code Ann. 57-3-2 (3).

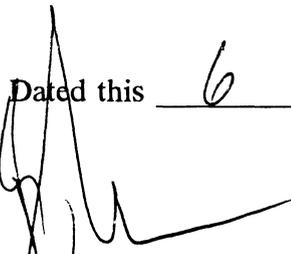
Conclusion

The court clearly erred by summarily ruling that a deed not recorded by a grantee does not convey to the grantee the grantor's ownership interest in the property which is the subject of the deed in question, and thus does not destroy a joint tenancy with right of survivorship until the deed is recorded. Utah law is very clear that one who conveys and interest in property by quitclaim deed conveys "all right, title, interest and estate of the grantor in and to the premises therein." Recording only serves notice.

Mrs. Crowther's intent was to leave her interest in the property as indicated by the deed, the letter from Mr. Wharton (Mrs. Crowther's attorney) and her own codicil to her will.

This court should, as in the companion case in Summit County, give full force and effect to all provisions of the Utah Laws, cited above, and reverse the District Court's original decision and rule summarily for the Appellant.

Dated this 6 day of January, 1995.



Bryan Mower

Pro Se

Certificate of Service

Bryan D. Mower has sent a true and correct copy of Brief of Appellant to:

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DATED this 6 day of December, 1995.



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