

1995

Marvin Jarvis v. Dan L. Baker and Linda Thiessens : Brief of Appellant

Utah Court of Appeals

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David B. Thompson; Joseph E. Tesch; Tesch, Thompson & Sonnenreich; Attorneys for Appellants.
S. Junior Baker; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

MARVIN JARVIS,	:	
Plaintiff/Appellee,	:	Case No. 950130-CA
	:	
L. BAKER and LINDA	:	Priority No. 15
TESSENS,	:	
Defendants/Appellants.	:	

BRIEF OF APPELLANTS

APPEAL FROM THE FINAL JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT OF WASATCH COUNTY,
STATE OF UTAH, THE HONORABLE GUY R.
BURNINGHAM, PRESIDING

DAVID B. THOMPSON (4159)
JOSEPH E. TESCH (A3219)
TESCH, THOMPSON &
SONNENREICH, L.C.
314 Main Street, Suite 201
P.O. Box 3390
Park City, Utah 84060

Attorneys for Appellants

J. JUNIOR BAKER
BAKER & HICKEN
40 South Main Street, Suite 10
P.O. Box 306
Spanish Fork, Utah 84660-0306

Attorneys for Appellees

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

MARVIN JARVIS,

Plaintiff/Appellee,

v.

DAN L. BAKER and LINDA
THIESSSENS,

Defendants/Appellants.

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Case No. 950130-CA

Priority No. 15

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TESCH, THOMPSON &
SONNENREICH, L.C.
314 Main Street, Suite 201
P.O. Box 3390
Park City, Utah 84060

Attorneys for Appellants

S. JUNIOR BAKER
BAKER & HICKEN
40 South Main Street, Suite 10
P.O. Box 306
Spanish Fork, Utah 84660-0306

Attorneys for Appellees

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IN THE UTAH COURT OF APPEALS

MARVIN JARVIS,	:	
Plaintiff/Appellee,	:	Case No. 950130-CA
v.	:	
DAN L. BAKER and LINDA	:	Priority No. 15
THIESSSENS,	:	
Defendants/Appellants.	:	

BRIEF OF APPELLANTS

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from the final judgment of the Fourth Judicial District Court. This Court has jurisdiction over the appeal under Utah Code Ann. § 78-2a-3(2)(k) (Supp. 1994), in that the case has been transferred from the Utah Supreme Court.

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The sole issue presented on appeal is whether the trial court erred in refusing to credit defendants Baker and Thiessens for the improvements they made to certain property acquired as a result of a county tax sale, after the court invalidated the tax sale and quieted title in plaintiff Jarvis.

This issue presents a question of law which is reviewed de novo on appeal. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 489 U.S. 841 (1990).

This issue was preserved before the trial court at T. 11-13.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 78-40-5 (1992):

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color title adversely to the claims of the plaintiff, in good faith, the value of such improvements, except improvements made upon mining property, must be allowed as a setoff or counterclaim against such damages.

STATEMENT OF THE CASE

After Wasatch County sold certain property to Giles Bros., L.C. at a tax sale and the latter conveyed that property for value to defendant Thiessens, plaintiff Jarvis filed two lawsuits: (1) a quiet title action against Giles Bros., which challenged the validity of the tax sale; and (2) an unlawful detainer action against defendants Baker and Thiessens, which sought to evict defendants from the property for alleged nonpayment of rent on a lease for the property between Jarvis and Baker (R. 3, 6). The two cases were consolidated pursuant to stipulation of the parties (R. 35).

Based on the parties' stipulated facts, the court invalidated the tax sale (because the County had failed to comply with the statutory notice provisions) and quieted title in Jarvis (R. 119). After a further hearing, it then entered final judgment against Baker and Thiessens for \$4,302.71 (R. 154, 157) (copies of the court's Judgment and Order and Findings of Fact and Conclusions of Law are contained in an addendum to this brief).

Baker and Thiessens timely filed an appeal from the trial court's judgment (R. 160).

STATEMENT OF FACTS¹

Plaintiff Marvin Jarvis owned a parcel of property in Wasatch County. As of June 29, 1990, Jarvis had leased the property to defendant Baker and another person. The lease agreement provided for rental payments of \$250.00 per month. The last rental payment was made in September 1991 when the payments were already several months in arrears.

Due to nonpayment of taxes, Wasatch County sold the property at a tax sale in May 1992, but failed to send prior notice to Jarvis. The buyer at that sale was Giles Bros., L.C., which received a tax deed from the County. Shortly thereafter, Giles Bros. sold the property to defendant Thiessens.

In June 1992, Jarvis filed a quiet title action against Giles Bros., which challenged the validity of the tax sale of the subject property (R. 3, 22). In July 1992, he filed an unlawful detainer action against Baker and Thiessens, which sought their eviction from the property based on alleged nonpayment of rent under the lease Jarvis had with Baker (R. 6). Baker and Thiessens counterclaimed that Thiessens owned the property, not Jarvis (R. 17). After Giles Bros. disclaimed any interest in the property, Jarvis's two actions were consolidated pursuant to the parties' stipulation (R. 31, 35).

¹ This statement of facts is based on the parties' stipulation of facts and the trial court's findings of fact (R. 47, 154). There is no dispute as to the relevant facts.

On the issue of ownership, which turned on the validity of the tax sale, the trial court ruled that the sale was invalid because the County had failed to comply with the statutory requirements for notice of the sale. Accordingly, the court quieted title in Jarvis (R. 119).

The matter then proceeded to trial on the question of damages. Concluding that Baker and Thiessens owed Jarvis rent for the periods before and after the May 1992 tax sale during which they occupied the property, the court awarded Jarvis a sum of \$11,274.55. The court credited Baker and Thiessens \$6,972.24 for various items and entered final judgment against them for \$4,302.71². It refused to credit them for \$9,415³ in improvements they had made to the property after the tax sale and conveyance to Thiessens, instead ruling that they could "take any and all improvements with them" (even though the court acknowledged that the improvements were "gravel, [a] septic tank, and roofing materials") (R. 154, 157).

SUMMARY OF ARGUMENT

When it quieted title to the subject property in Jarvis, the trial court erred in not crediting Baker and Thiessens for the improvements they made to the property during the period in which Thiessens held the property under color of title. The Utah Code unambiguously provides that, in a quiet

² There is a slight discrepancy between the court's Judgment and its Conclusions of Law, the latter indicating a figure of \$4,302.31 rather than \$4,302.71 (R. 149, 156).

³ The parties stipulated to this amount (T. 4).

title action, a defendant holding under color of title and making permanent improvements in good faith is entitled to recover the value of the improvements.

The trial court's failure to apply the plain requirements of the Code constitutes reversible error. Accordingly, this Court should reverse the trial court's judgment insofar as it fails to credit Baker and Thiessens for their improvements to the property, and remand the case with directions to modify the judgment accordingly.

ARGUMENT

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN, IN QUIETING TITLE TO THE SUBJECT PROPERTY IN JARVIS, IT REFUSED TO CREDIT BAKER AND THIESSSENS FOR THEIR IMPROVEMENTS TO THE PROPERTY THE UTAH CODE CONTRARY TO THE UTAH CODE

It was error for the trial court, in quieting title to the subject property in Jarvis, to refuse to credit Baker and Thiessens for improvements they made to the property in good faith while Thiessens held the property under color of title. The Utah Code clearly required the court to order Jarvis to pay the value of those improvements before taking the property pursuant to his quiet title action.

As Jarvis's motion for summary judgment below made clear, his action against Baker and Thiessens was one to quiet title. See Pltf.'s Mem. in Support of Mot. for Summary Jdgmt. at 1 (R. 63) ("This case is a quiet title dispute to a parcel of property located in Wasatch County."). In chapter 40 of Title 78 of the Utah Code, which pertains to quiet title actions, section

78-40-5 provides:

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color title adversely to the claims of the plaintiff, in good faith, the value of such improvements, except improvements made upon mining property, must be allowed as a setoff or counterclaim against such damages.

Utah Code Ann. § 78-40-5 (1992). See also Utah Code Ann. §§ 57-6-1, -3, and -4 (1994) (the "occupying claimant" provisions, which make clear that one who holds property under color of title and in good faith makes valuable improvements thereon, but is later found not to be the owner, is entitled to fair compensation for those improvements before being dispossessed of the property).

There being no dispute that Thiessens held the property under color of title pursuant to a tax sale (having taken directly from Giles Bros., the purchaser of the property at the tax sale)⁴, and that Thiessens and Baker made permanent improvements to the property in good faith, the Utah Code required the court to credit Baker and Thiessens for the value of the gravel, septic tank, and roofing materials -- improvements that could not reasonably be characterized as anything but permanent.⁵ The statutory scheme is designed to protect one who

⁴ See Utah Code Ann. § 57-6-4 (1994) (purchaser at tax sale has "color of title"); Peterson v. Weber County, 99 Utah 281, 103 P.2d 652, 655-56 (1940) (same).

⁵ Although the trial court did not make a specific finding on the question, the permanency of the improvements does not appear to be a matter of legitimate dispute. In any event, if

purchases pursuant to operation of the tax laws. It "is an assurance that such purchasers may, so long as they have acted in good faith, immediately commence the improvement and development of the property without the risk of loss as regards such improvements." Peterson v. Weber County, 99 Utah 281, 103 P.2d 652, 656 (1940).

Although the pertinent statutes were not cited to the court, Baker and Thiessens plainly argued below that credit for the improvements was due because they were made under the justified belief that Thiessens owned the property (T. 12). The trial court erred in rejecting that argument and denying the requested credit. In short, the Code precluded such a ruling.

Insofar as it may be argued that defendants' failure to cite the pertinent statutes to the trial court constitutes waiver, Baker and Thiessens should nevertheless prevail under the doctrine of plain error. Given the unambiguous requirements of the Code concerning compensation for improvements, it should have been obvious to the court that a credit for improvements was required, and the court's contrary ruling plainly harmed Baker and Thiessens. See State v. Eldredge, 773 P.2d 29, 35 (Utah) (there are two requirements for a finding of plain error: (1) "it should have been obvious to a trial court that it was committing error," and (2) the error must be harmful), cert. denied, 493 U.S. 814 (1989).


there is doubt about whether the improvements were permanent, upon remand the trial court should receive any necessary evidence on the point and enter an appropriate finding.

Accordingly, this Court should reverse the trial court's decision denying Baker and Thiessens credit for the improvements. The Court should remand the case with directions that the lower court modify its judgment to require Jarvis to pay Baker and Thiessens the \$9,415 for the improvements, as part of quieting title in Jarvis. See Peterson, 103 P.2d at 656. The result of this modification is a net judgment of \$5,112.29 in favor of Baker and Thiessens.

CONCLUSION

Based on the foregoing arguments, this Court should reverse the trial court's judgment insofar as it fails to credit Baker and Thiessens for their improvements to the property, and remand the case with directions to modify the judgment accordingly.

RESPECTFULLY submitted this 6th day of March, 1995.


DAVID B. THOMPSON
JOSEPH E. TESCH
Tesch, Thompson &
Sonnenreich, L.C.

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that two true and accurate copies of the foregoing Brief of Appellants were mailed, postage prepaid, to S. Junior Baker, Baker & Hicken, Attorneys for Appellees, 40 South Main Street, Suite 10, P.O. Box 306, Spanish Fork, Utah 84660-0306, this 6th day of March, 1995.

David B. Thompson

ADDENDUM

SCOTT G. CHARLIER (5930)
Attorney for Plaintiff
440 South 700 East, Suite 101
Salt Lake City, UT 84102
Telephone: (801) 534-0651

FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UTAH
9-12-94 Date
____ Clerk
RMB Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH

MARVIN JARVIS,)	
)	
Plaintiff,)	JUDGMENT AND ORDER
)	
v.)	
)	
DAN L. BAKER and)	Civil No. 7105
LINDA THIESSENS,)	
)	
Defendants.)	

The above-entitled matter came on for trial before the Honorable Guy R. Burningham, Judge of the above-entitled court on Friday the 10th day of June, 1994 at the hour of 1:30 p.m. The Plaintiff was present and was represented by S. Junior Baker. Defendants were present and represented by Scott G. Charlier. The parties having reached a partial stipulation, the court having received exhibits and heard the argument of the parties, having entered its Findings of Fact and Conclusions of Law, and good cause appearing herein, now hereby ORDERS, ADJUDGES AND DECREES:

1. Judgment is entered in favor of the Plaintiff and against the Defendants for the sum of \$4,302.71.

2. Defendants are ordered to pay \$900.00 to the Plaintiff as quickly as they can bring in a car crusher and obtain said cash, provided that a minimum of \$300.00 of said sum must be paid on or before the 15th day of June, 1994.

3. Defendants are ordered to vacate the premises on or before the 15th day of September 1994.

4. In the event that any payments due prior to September 15, 1994 are delinquent, Defendant is entitled to an immediate order of eviction and Writ of Restitution.

5. The Defendant, Thiessens, is ordered to obtain a Quit Claim Deed from William A. Baker to either herself or the Plaintiff for the subject property on or before the 10th day of August, 1994.

6. Plaintiff may seek additional damages if the sums from the state treasurer, unclaimed property division are not returned to him or if he does not receive the benefit of the tax payment of \$2,815.35.

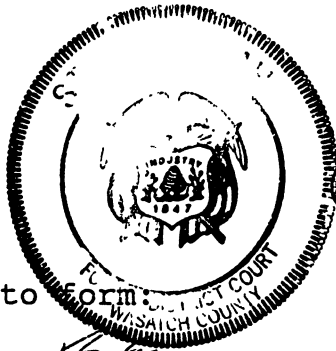
7. Defendants are ordered to remove all of their assets from the property, and are allowed to take any and all improvements with them. Defendants further have the option to

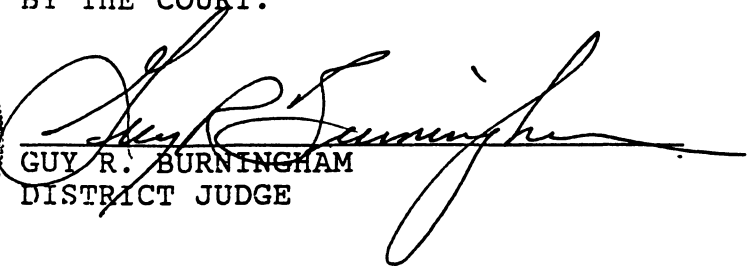
remove the assets of the previous tenants which were on the property at the time Defendants took possession.

8. Judgment entered herein shall bear the interest rate of 10% per annum, the contract rate.

DATED this 7 day of September, 1994.

BY THE COURT:




GUY R. BURNINGHAM
DISTRICT JUDGE

Approved as to form:


S. JUNIOR BAKER

SCOTT G. CHARLIER (5930)
Attorney for Plaintiff
440 South 700 East, Suite 101
Salt Lake City, UT 84102
Telephone: (801) 534-0651

FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UTAH
9-12-94 Date
____ Clerk
RMB Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH

MARVIN JARVIS,
Plaintiff,

v.

DAN L. BAKER and
LINDA THIESSENS,
Defendants.

)
)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
)
)
)

Civil No. 7105
)
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The above-entitled matter came on for trial before the Honorable Guy R. Burningham, Judge of the above-entitled court on Friday the 10th day of June, 1994 at the hour of 1:30 p.m. The Plaintiff was present and was represented by S. Junior Baker. Defendants were present and represented by Scott G. Charlier. The parties having reached a stipulation on numerous facts, the two unresolved issues of treble damages and credit for improvements being legal conclusions based upon the stipulated facts, the parties having argued their respective positions, Exhibits 1 and 2 having been marked and accepted representing a lease agreement and accounting of rent owing, respectively, the

court being fully advised in the premises now hereby makes and enters the following:

FINDINGS OF FACT

1. Plaintiff, Marvin Jarvis, is the owner of the property in question.

2. As of June 29, 1990, the Plaintiff and Defendant, Baker, had entered into a lease agreement for the rental of the property.

3. The lease provided for rental payments of \$250.00 per month.

4. The last payment was made in September of 1991 when the payments were already several months in arrears.

5. Because of the attempted tax sale by Wasatch County and the attendant cloud on title, resolved only through litigation, delays were experienced in bringing the eviction matter to trial.

6. That the Defendants, Baker and Thiessens, have made improvements to the property. The Defendants' receipts indicate costs over \$9,000.00 for said improvements, which include gravel, septic tank, and roofing materials.

7. That the Defendants have paid the 1992 property taxes totaling \$512.50, as well as the 1993 property taxes totaling \$519.74 for a total of \$1,032.24, which the parties agree should

be allowed as a credit to the Defendants, which the court finds fair and reasonable.

8. That the sum of \$3,124.65 plus interest, has been paid by Wasatch County to the State Treasury, unclaimed property division, which should also be allowed as a credit to the extent that it is returned by the state to the county and paid by the county to the Plaintiff, which the court finds to be fair and reasonable.

9. The sum of \$2,815.35 has been paid by the Defendants for the taxes which led to the disputed tax sale and to the extent not also paid by the Plaintiff, may be returned to the Plaintiff and proper credit allowed against the sums owed by the Defendants to the Plaintiff.

10. That the total credits, assuming all sums are returned and are received as a credit by the Plaintiff, total \$6,972.24, plus any accrued interest.

11. The parties have agreed that the Defendants may stay on the property through September 15, 1994 at which time they must be completely off the property. That court finds this to be fair and reasonable.

12. The parties have further agreed that the sum of \$300.00 per month for a total of \$900.00 to be paid in advance is fair

and reasonable rental for the property, which agreement the court finds fair and reasonable.

13. The parties have agreed that the Defendants would be allowed to bring in a car crusher in order to liquidate assets into cash with which to pay the \$900.00, provided that at least \$300.00 should be paid by the 15th day of June 1994, which agreement the court finds fair and reasonable.

14. The parties have further agreed that the Quit Claim Deed dated November 3, 1993 and recorded November 15, 1993 from Linda Thiessens to William A. Banker would be reversed and a Quit Claim Deed from William Baker to Linda Thiessens or Marvin Jarvis would be obtained within sixty (60) days of June 10, 1993, which agreement the court finds fair and reasonable.

15. The last paragraph of the lease agreement provides that the cost of all improvements to the property are to be born by Lessee, with Lessor having no obligation to make improvements.

16. The lease agreement also provides for interest of 10% per annum, which the Plaintiff has used in Exhibit 2 in calculating amounts owed.

The court having entered the foregoing Findings of Fact, now makes the following:

CONCLUSIONS OF LAW

1. The Plaintiff, who is the owner of the property is entitled to evict the Defendants and tenants thereof, and to regain possession of the property.

2. The Defendants are allowed to stay on the property through September 15, 1994, so long as \$300.00 per month rental is paid in advance.

3. If at any time prior to September 15, 1994, the monthly rental is not paid in advance, Plaintiff may obtain an immediate Writ of Execution and Restitution directing the Sheriff of Wasatch County to restore possession of the premises to the Plaintiff.

4. That due to the delays caused by Wasatch County's tax sale, which was subsequently held to be invalid, the court concludes, as a matter of law, that the Plaintiff is not entitled to treble damages in this matter.

5. The court further concludes, as a matter of law, that the Defendants are not entitled to a credit against their rent for improvements made to the property.

6. The court concludes that the Defendants are entitled to a credit of \$6,972.24 against rental monies owed with leave to the Plaintiff to seek additional damages in the event that the

monies outlined in the Findings of Fact are not returned to him or credited to him.

7. That any impound fees received by the Plaintiff after he regains possession are also to be credited against rental sums owing.

8. A judgment should be entered in favor of the Plaintiff and against the Defendants for \$4,302.31 representing sums owed of \$11,274.55 less a credit of \$6,972.24.

DATED this 7 day of September, 1994.

BY THE COURT:


GUY R. BURNINGHAM
DISTRICT JUDGE

Approved as to form:


S. JUNIOR BAKER