2003

David J. Allen v. Thomas K. Hall and Homecomings Financial Network, Inc. : Petition for Rehearing

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

DAVID J. ALLEN, an individual, Appellant, v. THOMAS K. HALL, an individual, and HOMECOMINGS FINANCIAL NETWORK, INC., a Delaware corporation, Appellees.	Appellate Case No. 20030633-CA

PETITION FOR REHEARING

Appeal from Order and Decree Quieting Title
Entered July 2, 2003 by the Honorable Tyrone E. Medley
of the Third Judicial District Court of Salt Lake County, State of Utah

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Plaintiff and Appellant, David J. Allen, respectfully submits this Petition for Rehearing to the Court pursuant to Rule 35 of the *Utah Rules of Appellate Procedure*. The Court filed its Opinion in this matter on January 21, 2005. Plaintiff petitions the Court for review, rehearing and reconsideration on the following particulars:

SUBSEQUENT EVENTS

It has come to the attention of Appellant Allen that during the pendency of this appeal the following events have occurred:

1. On or about October 3, 2003, Homecomings Financial Network, Inc. ("Homecomings") caused to be executed, recorded and served upon Appellee Hall a Notice of Default and Election to Sell Under Deed of Trust, referring to that Deed of Trust on the Flanders Road Property executed by Appellee Hall and recorded on or about June 23, 1999.

2. On or about May 10, 2004, Homecomings caused to be executed, recorded and served upon Appellee Hall a Notice of Rescission of Notice of Default and Election to Sell Under Deed of Trust, rescinding the Notice referred to in paragraph 1 above.

3. On or about April 22, 2004, Appellee Hall executed a Statutory Warranty Deed-in-Lieu conveying his ownership in the Flanders Road Property to BankOne as Trustee for Homecomings.

4. On or about April 22, 2004, Appellee Hall executed, in conjunction with the Statutory Warranty Deed-in-Lieu, an Estoppel Affidavit reciting in part that "...the consideration for said [Statutory Warranty Deed-in-Lieu] was and is (i) the full cancellation of all debts, obligations, costs and charges secured by that certain Deed of Trust heretofore

existing on said property, including, without limitation, that certain Installment Note executed by [Appellee Hall] in favor of [Homecomings] as of June 7, 1999 which Deed of Trust was executed by Thomas K. Hall, a married man Trustors, to Colonial Title Company as Trustee, for Homecomings Financial Network Inc. Dated June 7, 1999 and recorded June 23, 1999 as document 7394443, book 8288, page 6184 of official records, Salt Lake County, Utah, and (ii) the reconveyance of said property encumbered by said Deed of Trust; ...."

5. On or about July 9, 2004 a Deed of Full Reconveyance was executed by the Trustee under the Deed of Trust dated June 7, 1999 reciting that all sums secured by said Deed of Trust have been fully paid and satisfied.

6. The Statutory Warranty Deed-in-Lieu dated April 22, 2004; the Estoppel Affidavit dated April 22, 2004 and the Deed of Full Reconveyance dated July 9, 2004 were each recorded with the Salt Lake County Recorder on July 16, 2004.

7. On or about July 28, 2004 BankOne as Trustee for Homecomings executed a Special Warranty Deed conveying and granting the Flanders Road Property to Chad R. Moore and Melanie S. Moore. This Special Warranty Deed was recorded with the Salt Lake County Recorder on July 30, 2004.

8. As a result of the foregoing, Appellee Hall has no more interest in or liability with respect to the Flanders Road Property and Appellee Homecomings has no continuing interest in the Flanders Road Property. In fact, Appellee Homecomings conveyed the Flanders Road Property by special warranty deed which limits its warranties to the buyer to those claiming by or through Appellee Homecomings. In addition, Appellee Hall testified

at trial that he paid for a lenders policy of title insurance on the Flanders Road Property in favor of Appellee Homecomings, so Appellee Homecomings has no financial risk in this matter, the risk being born by the title insurance company which is where it should be.

ARGUMENTS

I. ALLEN'S PROPERTY INTEREST IS FREE AND CLEAR OF ALL CLAIMS BY AND THROUGH SATTERFIELD.

The appeals court correctly found that title to the Flanders Road Property automatically reverted to Appellant Allen upon Satterfield's moving to North Carolina in July 1999. See Paragraph 10 of the Opinion. Therefore, Appellant Allen has been the owner of the Flanders Road Property since July, 1999 when Satterfield relocated, although Appellant Allen has been denied the possession, use and enjoyment of the property by the actions of Appellee Hall and Homecomings.

Appellant Allen's deed to Satterfield was subject to automatic divestiture if Satterfield relocated. See Paragraph 11 of the Opinion. It therefore follows that Satterfield's Quit Claim Deed to Appellee Hall was subject to the same automatic divestiture if Satterfield relocated and Appellee Hall's Trust Deed to Homecomings was also subject to the same automatic divestiture if Satterfield relocated.

Applying the principles of real property law, when Satterfield relocated, all interest of Satterfield, Hall and Homecomings, and any of their successors in interest, in and to the Flanders Road Property terminated. Thus, under the law of real property, Appellant Allen

succeeded to the property free and clear of all liens and encumbrances arising after his deed to Satterfield. Thus, Appellant Allen has no obligation to

II. THE COURT'S OPINION DOES NOT CLEARLY DIFFERENTIATE THE LAW OF REAL PROPERTY AND THE LAW OF CONTRACTS.

As has been discussed above, under the law of real property, neither Satterfield, Appellee Hall nor Appellee Homecomings has any claim against the Flanders Road Property of any claim against Appellant Allen. Both the trial court and this court fail to distinguish between the law of real property and the law of contracts.

The distinction should be this: if Satterfield, Appellee Hall or Appellee Homecomings have any claim against Appellant Allen, it is pursuant to the Decree of Divorce and not pursuant to Appellant Allen's deed to Satterfield.

Satterfield has a claim to one-half the equity in the Flanders Road Property upon sale of the property by Appellant Allen. The only claim which Appellee Hall or Appellee Homecomings might have is a claim against Satterfield's rights under the Decree of Divorce. However, neither Appellee Hall or Appellee Homecomings asserted any such claim.

Appellee Hall filed a counterclaim with his answer claiming (i) quiet title to the property, (ii) unjust enrichment and a Utah Occupying Claimant Act claim for improvements to the property, and (iii) damages for opportunity costs resulting from his inability to refinance. The trial court granted quiet title to Appellee Hall, ruled his Utah Occupying Claimants Act claim (and unjust enrichment claim) moot and denied his claim for damages.

Appellee Hall also filed a third party complaint against Satterfield, Michael Huber and Colonial Title Insurance Agency. The trial court made no ruling on these matters.

Appellee Homecomings did not raise any claims against Appellant Allen or Satterfield. However, Appellee Homecomings did file a motion to dismiss for failure to name Satterfield as an indispensable part, although Appellee Homecomings never filed any third party action against Satterfield.

III. THE COURT'S RULING REGARDING THE MEANING OF THE DECREE OF DIVORCE IS CONTRARY TO THE INTENT OF THE PARTIES.

Appellant Allen has discussed extensively in the Brief of Appellant the meaning of the Decree of Divorce as it relates to Appellant Allen's obligations, if any, regarding debts incurred with respect to the Flanders Road Property by Satterfield and Appellee Hall. Appellant Allen does not repeat those arguments here but refers the court to the Brief of Appellant for a review of the same. Appellant Allen is pleased that the court found the Decree of Divorce unambiguous as it relates to subsequent debts of Satterfield and Appellee Hall, but the court's reading is inapposite to the meaning and intent of the Decree of Divorce.

Rights Under the Decree of Divorce. The Decree of Divorce grants rights to Appellant Allen and Satterfield and to no one else. Anyone claiming rights under the Decree of Divorce must do so through Appellant Allen or through Satterfield, and no one has done so.

First, the Decree of Divorce gave Satterfield a property right, i.e. a fee simple determinable, subject to possibility of reverter.

Second, since restraints on alienation are not legal and since the Decree of Divorce did not specify otherwise, Satterfield had the full right to convey her interest, which she did by quit claim deed to Appellee Hall.

Third, Satterfield could only convey the fee simple determinable estate, subject to possibility of reverter, that she owned, whether it be trust deed or deed of conveyance.

Fourth, Appellant Allen's knowledge of Satterfield's conveyances and refinancings does not amount to consent. There is no evidence that Appellant Allen consented to any of Satterfield's conveyances. Satterfield had the legal right, as well as the right under the Decree of Divorce, to refinance and to convey the property.

Fifth, any person loaning money to Satterfield and taking a security interest in the Flanders Road Property did so with the legal and constructive knowledge that their security interest in the property could be no greater than Satterfield's interest in the property, i.e. a fee simple determinable, subject to possibility of reverter.

Sixth, Appellant Allen assumed no contractual obligation to any of Satterfield's lenders or successors in interest, and in fact neither had nor has any privity of contract with any of them.

For whatever reason, the trial court and this court seem to think that Satterfield's refinancings and subsequent conveyance to Appellee Hall somehow encumber Appellant Allen's interest in the Flanders Road Property. Such an interpretation mocks the law. If Appellee Hall or Appellee Homecomings claim that their interest in the property is superior

to that of Appellant Allen, then what exception to the Statute of Frauds which would require a writing signed by Appellant Allen subordinating his interest do they claim?

Appellant Allen's Obligations Under the Decree of Divorce. Appellant Allen's obligation under the Decree of Divorce is to sell the property and split the equity with Satterfield.

For the reasons set forth herein, Appellant Allen has no obligation to pay any debts with respect to the property. The language in the Decree of Divorce stating that upon reversion of the property to Appellant Allen he will be responsible for all indebtedness thereon refers only to the indebtedness on the property at the time of the conveyance to Satterfield.

Both the trial court and this court have overlooked the concept of equity addressed in the Decree of Divorce. The clear reading of the Decree of Divorce is that equity is the equity as it exists at the time of the Decree of Divorce, i.e. fair market value less debt existing at the time, plus any accretion in value. But to apply the reading of the trial court and this court that the equity can be removed from the property by Satterfield's refinancing eviscerates the Decree of Divorce.

The Decree of Divorce is a contract between Allen and Satterfield. If Homecomings desires to claim against Allen, it must do so as a third party beneficiary, which it has not done. Satterfield's claim under the Decree of Divorce to one-half the equity in the Flanders Road Property is a contract right and not a property right, i.e. it is a claim to proceeds and not a claim to the property.

The second sentence of Paragraph 10 of the Decree of Divorce states "[t]he defendant [Satterfield] shall be responsible for all indebtedness and expenses therefrom, holding the plaintiff [Appellant Allen] harmless therefrom." This portion of the Decree of Divorce is absolutely clear in that Satterfield is to service the indebtedness on the Property, that she alone is responsible for the indebtedness and that Appellant Allen is to be held harmless from any liability for the indebtedness. The district court erred in construing this provision otherwise.

Satterfield is not only responsible for all indebtedness on the property, but she is to hold Appellant Allen harmless from all indebtedness on the Property.

The fifth sentence of Paragraph 10 of the Decree of Divorce states in part that upon the occurrence of the triggering event, "the ownership of the marital residence shall revert to the plaintiff [Appellant Allen], who will then sell the home and divide the proceeds equally wit the defendant [Satterfield], and who will be responsible for all indebtedness thereon until the house is sold." It is clear from the foregoing that the order of events is (i) reversion to Appellant Allen, (ii) sale of home and (iii) Appellant Allen to service the debt on the Property from the point in time that ownership reverts to him until the Property is sold.

Any confusion on the part of the district court should have been readily clarified from a reading of the final sentence of Paragraph 10 of the Decree of Divorce which states that "[t]hese provisions are to ensure that the children have a suitable residence during their minority, are structured to provide a benefit to the defendant [Satterfield] if she shall continue to reside in Salt Lake City, Utah, in the form of all of the equity in said home, and

a detriment if she shall move, in the form of the loss of one-half of the equity." To infer otherwise is to render the Decree of Divorce a nullity and is an untenable interpretation. It makes no sense to structure a property settlement in a marital dissolution and then read the provision as anything other than its intended purpose.

When the Decree of Divorce was entered into, the Property had equity.

IV. UTAH OCCUPYING CLAIMANTS ACT IS INCORRECTLY APPLIED

The trial court ruled that Appellee Hall's claim under the Utah Occupying Claimants Act was moot. The trial court made no award to Appellee Hall under this claim. *See* Order and Decree Quieting Title, paragraph 4 [R. at 545]. The trial court does make a finding as to what it thinks that Appellee Hall might be awarded but this is entitled to no more deference than dicta. *See* Findings of Fact and Conclusions of Law, page 13 [R. at 542]. Appellee Hall failed to file any brief in this appeal. Appellee Homecomings chose not to address the issue in its appeal brief. *See* Brief of Appellee Homecomings, pages 15 and 16. If this court believes that Appellee Hall is entitled to a recovery under the Utah Occupying Claimants Act, it should not be ruling based on the insufficient evidence of the trial court but should remand for further proceedings by the trial court. However, for the reasons set forth below, this court should deny Appellee Hall any recovery under the Utah Occupying Claimants Act.

The Utah Occupying Claimants Act has been in existence for almost one hundred years. Yet during that time, fewer than two dozen reported cases have been brought asserting

claims under that Act. The majority of these cases dealt with defective or disputed tax sales or adverse possession.

The Utah Occupying Claimants Act is codified at Utah Code Ann. §57-6-1 et seq. This statute requires claimants under the Utah Occupying Claimants Act to show that they (i) have "color of title" and (ii) made valuable improvements (iii) in good faith. *See* Hidden Meadows Dev. Co. v. Mills, 590 P.2d 1244, 1249 (Utah 1979).

Scope of the Utah Occupying Claimants Act. Before making arguments concerning the statutory requirements of the Utah Occupying Claimants Act, Appellant believes that the issue of scope is dispositive in this matter. Specifically, the Utah Occupying Claimants Act applies only where a person's claim of title is cut short. Every Utah single case addressing a claim under the Utah Occupying Claimants Act deals with an occupant claiming title to property whose title is cut short by the claim of another, not by operation of law.

For example, a life tenant or more specifically his estate has no claim for improvements against the remainder interest holder upon the death of the life tenant because the life tenant has had the full use and enjoyment of his estate. It is clear that the decedent's estate would have no claim under the Utah Occupying Claimants Act.

Likewise, Appellee Hall as the holder of a fee simple determinable title, subject to a possibility of reverter, has no claim for his improvements against the holder of the reversionary interest because Appellee Hall has had the full use and enjoyment of his estate.

If this court's ruling were allowed to stand unchanged, it would stand for the proposition that every holder of a reversionary interest or remainder interest in real property

could be liable to the intervening holder for his improvements to the property. Obviously, this was not the intent of the Utah Occupying Claimants Act. The scope of the Act should be limited to those circumstances in which an occupant's estate is cut short by the claim of another and should not extend to those circumstances in which the occupant has the full use and enjoyment of his legal title, as Appellee Hall has, and it passes by operation of law to the next successor in interest.

Color of Title. It is acknowledged that Appellee Hall had legal title to the property which is the subject of the action. Appellee Hall's title was a fee simple determinable, subject to a possibility of reverter. It is important to note, however, that "color of title" is defined by Black's Law Dictionary as "that which is a semblance or appearance of title, but is not title in fact or in law." McCoy v. Lowrie, 42 Wash. 2d 24, 253 P.2d 415, 418. This is consistent with the understanding that the Utah Occupying Claimants Act deals with disputed or conflicting claims to property and not to the normal legal succession of interest. Appellant Allen is not disputing Appellee Hall's title to the property, but merely pointing out, and this court agrees, that Appellant Allen is the successor in interest to the property.

Valuable Improvements. The second requirement of the Utah Occupying Claimants Act is that the claimant make valuable improvements to the Property. This requirement is set out in *Utah Code Ann.* §57-6-2, which provides that the complaint of the party claiming under that Act state the value of the real estate, exclusive of the improvements thereon made by the claimant and the value of such improvements. Appellee Hall's Amended Answer and Amended Counterclaim did neither. [R. at 275] "The issues joined thereon must be tried as

in law actions, and the value of the real estate and of such improvements must be separately ascertained on the trial." *Utah Code Ann.* §57-6-2. The trial court likewise failed to find the value of the real estate, exclusive of the improvements, or the value, as opposed to the cost, of the improvements. The trial court merely identified the alleged cost of the improvements as presented by Appellee Hall. This finding is insufficient to comply with the requirements of the Utah Occupying Claimants Act.

In Reimann v. Baum, 115 Utah 147, 156, 203 P.2d 387, 391-92 (1949), the court explained that, although "[t]he reasonable cost of the improvements, alone, is not sufficient evidence of value,...." Id. 203 P.2d at 392. The Utah Supreme Court has further explained that to allow a different measure of recovery, such as allowing the claimant to "recover costs of construction, disassociated from land value and not limited to the extent of enhancement of land value, which cost could well exceed such enhancement, would cast a burden upon the record owner greater than the equitable requirement that he do equity by paying for unjust enrichment." Id.

In discussing the value of the improvements claimed under the Utah Occupying Claimants Act, the Utah Supreme Court has held that the measure of recovery for the improvements is the increased value of the property due to the improvements. The court stated, "the occupying claimant's measure of recovery is the extent to which his improvements enhance the value of the land, or in other words, the difference between the reasonable relative values of the land with and without the improvements." *See* Hi-Country Estates v. Bagley & Co., 928 P.2d 1047, 1051(Utah App. 1996).

This court ruled that "Allen did not preserve any objection to the trial court's use of Hall's evidence regarding the value of goods and labor expended in improving the property, ..." See Opinion Paragraph 14. Appellant Allen asserted in his Brief of Appellant that the trial court "failed to make the requisite findings of value added to the Property as a result of improvements which Appellee Hall alleged to have made." *See* Brief of Appellant , pages 8 and 9. Appellant Allen further asserted in his Brief of Appellant that the trial court erred in failing to find the value of the real estate, exclusive of the improvements, and the value of the improvements." *See* Brief of Appellant, page 21.

This court ruled that Appellee Hall's claim under the Utah Occupying Claimants Act is properly supported by the difference between a $200,000.00 appraisal of the property and Appellee Hall's purchase price. *See* Opinion Paragraph 15. The trial court, however, made no finding regarding any appraisal or valuation of the property other than Appellee Hall's purchase price of $146,000.00. In addition, this court's ruling ignores any market factors such as fluctuating interest rates, general economic factors, or supply and demand.

The findings of the trial court are insufficient to support any claim by Appellee Hall under the Utah Occupying Claimants Act and that claim should be denied.

Good Faith. The final requirement of the Utah Occupying Claimants Act is that the claimant must have made the improvements to the real estate in good faith. Appellee Hall did not make his alleged improvements to the Property in good faith. The good faith of an occupying claimant must be premised upon a reasonable and honest belief of ownership. See Ute-Cal Land Dev. Corp. v. Sather, 645 P.2d 665, 667 (Utah 1982). The trial court

concluded as a matter of law that Appellee Hall had constructive notice of Appellant Allen's reversionary interest pursuant to the recording statute. This court also ruled that Appellee Hall had notice of the limitations of his estate in the property. Thus being charged with knowledge of Appellant Allen's reversionary interest, Appellee Hall cannot have a reasonable or honest belief of ownership and any claim by him under the Utah Occupying Claimants Act should be denied.

V. THE DENIAL OF APPELLANT ALLEN'S UNJUST ENRICHMENT CLAIM SHOULD BE REVERSED

The trial court denied Appellant Allen's claim for unjust enrichment because it held that he had no interest in the property. Now that this court has recognized Appellant Allen's interest in the property, he should be entitled to pursue his unjust enrichment claim.

CONCLUSION

Appellant Allen respectfully requests the court to review, rehear and reconsider this matter.

This Petition is presented in good faith and not for delay.

DATED February 4, 2005.

SWENSEN & ANDERSEN PLLC

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CERTIFICATE OF SERVICE

I certify that on February 4, 2005, I caused two (2) true and correct copies of the foregoing PETITION FOR REHEARING to be mailed, postage prepaid, to:

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