2004

Kitches and Zorn v. Yong Woo Kim : Reply Brief

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

KITCHES & ZORN, L.L.C., et al., Plaintiff, vs. YONG WOO KIM; YONG HWAN KIM aka KIM YONG HWAN; and SAK KWI SUK aka KWI SUK KIM, Defendants.	Appellate Case No. 20040526-CA

REPLY BRIEF OF APPELLANT

Appeal from the Final Order of the Second Judicial District Court of Davis County, State of Utah
The Honorable Rodney S. Page, District Court Judge

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I. DEFENDANT HAS FAILED TO OFFER A STATUTORY INTERPRETATION WHICH COMPORTS WITH THE PLAIN LANGUAGE OF THE STATUTE OR HARMONIZES ALL OF ITS PROVISIONS.

The Judgment statute, Utah Code Ann. § 78-22-1, *et seq*., was amended to simplify the process and create one repository for information concerning judgments on real property. Defendant has offered this court a strained reading of the statute without looking at the basic purpose of the statute, harmonizing parallel provisions within the statute or analyzing the plain language of the statute. Defendant has requested this court interpret the statute in a manner inconsistent with the purpose of the statute and the

Legislative intent in order to create a two-step process which is cumbersome and not readily apparent to anyone reading the statute's requirement.

Defendant has argued that sections 78-22-1 and 78-22-1.5 apply to different procedures and do not need to be in harmony. Specifically, defendant states that section 78-22-1 applies to judgments against real property in the county in which the judgment was rendered, whereas section 78-22-1.5 applies to judgments against real property in a county other than where the judgment was issued. Nothing in either of these sections supports this argument. Subsection (2) in section 78-22-1 provides that any judgment issued prior to July 1, 1997 automatically becomes a lien against real property located in the county where the judgment is entered. Subsection (2) is the only provision which addresses any different procedure for obtaining a lien against real property. Because the procedure was different prior to July 1, 1997, subsection (2) is a grandfather clause which only applies to judgments entered prior to July 1, 1997.

All judgments entered after July 1, 1997 must comply with the requirements of sections 78-22-1 and -1.5. See Utah Code Ann. §§ 78-22-1(7)(a) & -1.5(2) & (3). Specifically, sections 78-22-1(7)(a) and 78-22-1.5(3) apply to liens after July 1, 2002 and section 78-22-1.5(2) applies to liens after July 1, 1997, but prior to July 1, 2002. These sections do not contain any language which sets forth different requirements depending on whether the lien will be recorded in the county where the judgment was issued as

opposed to recording in a different county. Defendant is reading language and requirements into the statute which do not exist.

Any confusion or ambiguity in the language of the statute arises because the process for creating a judgment lien has been changed. As set forth fully in appellants' opening brief at pp. 8-10, the requirements for creating a judgment lien were changed in 1997 and changed again in 2001. These amendments were not intended to invalidate liens that had already been created previously, so the statute contains provisions, or grandfather clauses, that preserve those previous liens. See, e.g., Utah Code Ann. § 78-22-1(2) and § 78-22-1.5(2). Defendant is reading these clauses to require a more cumbersome process for new liens which is not what the Legislature intended.

Instead, the Legislature decided to streamline and centralize the process for creating and searching for liens against real property. Initially, the Registry of Judgments was created in 1997 in an attempt to facilitate searches for judgments. By creating the Registry of Judgments, the Legislature created an index where judgments were filed and could be searched by name. See Utah Code Ann. § 78-22-1.5. Those searching for judgments against a person could simply search the Registry of Judgments to determine if a person owed any outstanding judgments.

The problem with this system, however, is that persons doing title searches now had to search both the county recorder and the Registry of Judgment. This process

was more expensive and more cumbersome because it required a person to go to two different locations to search and correlate two different bodies of information in order to determine title for a single piece of property. Accordingly, the statute was amended in 2001 to require only that a judgment be recorded in the office of the county recorder. See Utah Code Ann. § 78-22-1(7) & 78-22-1.5(3). With respect to liens against real property, the goal was to create one place to conduct searches–the logical choice was the county recorder's office.

Defendant also argues that section 78-22-1(7) only applies to judgments recorded in the county where the judgment was issued because the judgment is already recorded in the Registry of Judgments. (See Def.'s Brief at p.9) Again, nothing in the statute indicates that when a judgment is issued it is automatically filed in the Registry of Judgments. Specifically, section 78-22-1.5 creates the Registry, but does not contain any indication that a judgment issued by the court is automatically filed in the Registry of Judgments for the county from which the judgment is issued. Rather, section 78-22-1.5 sets forth the requirements for filing a judgment in the Registry of Judgments.

Next, defendant argues the language in section 78-22-1.5(4) supports his claim that a judgment must be filed in the Registry of Judgments and recorded in order to create a judgment lien. Defendant argues the use of "and" indicates that both subsections (2) and (3) are required in order to create a judgment lien. The full text of subsection (4),

however, states: "In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, **or** any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include . . . ." Utah Code Ann. § 78-22-1.5(4) (emphasis added). Analyzing this section, the use of "and" does not support defendant's argument. The word "and" is used to indicate that subsection (4) applies to both subsections (2) and (3). Subsection (4) goes on to indicate it applies to a judgment filed in the Registry of Judgments "or" an abstract recorded with the county recorder. If defendant's interpretation were correct, the statute would use "and" instead of "or" later in the subsection. As it is written, subsection (4) contemplates that a judgment must be filed in the Registry or recorded with the county recorder, but not necessarily both as defendant would like.

Contrary to defendant's tortured interpretation of the statute's plain language, the only way to interpret all of the statute's provisions in harmony is to find that after July 1, 2002, a judgment lien is created when it is recorded with the county recorder. The statute does not set forth different procedures dependant on whether or not the real property is located in the county where the judgment was issued. Nothing in section 78-22-1 makes it a "general" provision as defendant argues, and nothing in section 78-22-1.5 makes it a more specific provision. Rather section 78-22-1.5 was enacted when the

Registry of Judgments was created. For liens established between 1997 and July 1, 2002, section 78-22-1.5 controlled section 78-22-1 with respect to the procedure for creating a judgment lien on real property. With the decision to change the procedure to require only recording a judgment with the county recorder, both sections 78-22-1 and 78-22-1.5 were amended to reflect the same procedure. Defendant's interpretation would put these two sections at odds which is contrary to Utah law governing statutory interpretation.

Defendant's argument ignores the Legislature's intent. The purpose of the statute is both to create a procedure for obtaining a judgment lien and to provide a system for searching for judgment liens. In 1997, the Legislature attempted to facilitate this process by creating the Registry of Judgments. The Registry of Judgments, however, was more useful as to people rather than real property. Under the procedure in place from 1997 through 2001, a judgment lien was created differently than other liens. Compare Utah Code Ann. § 78-22-1.5 with Utah Code Ann. §§ 38-1-1 (mechanics' liens); 38-2-7 (attorneys' liens); and 38-6-1 (tax liens). Each of these liens is created by recording a notice with the county recorder. In order to promote uniformity and ease the search for liens against real property, the judgment lien statute was amended to require only recording with the county recorder in order to create a judgment lien.

II. DEFENDANT'S REFERENCE TO RULE 69 IS MISGUIDED.

Although many creditors who obtain judgment liens under 78-22-1, *et seq.* also obtain Writs of Execution under Rule 69 of the Utah Rules of Civil Procedure, nothing about these two statutes require the provisions to be in harmony. More importantly, Rule 69 contains no reference to the Registry of Judgments. Defendant has argued section 78-22-1.5 requires a creditor to both file a judgment in the Registry of Judgments and record the judgment with the recorder in order to create a judgment lien. Defendant then argues Rule 69 requires substantially same steps in order to obtain a Writ of Execution. According to defendant, the requirements of Rule 69 support his interpretation of section 78-22-1, *et seq.*

First, a creditor does not need to comply with Rule 69 in order to create a judgment lien. Similarly, a creditor does not need to comply with section 78-22-1, *et seq.* in order to obtain a Writ of Execution. Because Rule 69 and the Judgment statute address fundamentally different procedures, the statutes are not as interrelated as defendant would lead this court to believe. Rule 69 and section 78-22-1, *et seq.* operate independently of one another and do not need to be in harmony.

Even if the statutes were dependent on another, Rule 69 does not require filing a judgment in the Registry of Judgments, which is the basis for defendant's argument and the trial court's decision. Specifically, defendant refers to those portions of

Rule 69 which require the judgment to filed and docketed with the clerk of the district court. See Utah R. Civ. P. 69(c) & (d). Rule 69, however, does not refer to the Registry of Judgments nor require a judgment be filed in the Registry. Filing and docketing with the clerk of a district court is not synonymous with filing in the Registry of Judgments.

Indeed, if Rule 69 supports any interpretation of the Judgment statute, it supports plaintiff's interpretation. Because Rule 69 does not require a judgment to be filed in the Registry of Judgments, the step of filing in the Registry of Judgments is superfluous to obtaining a Writ of Execution.

Simply put, defendant's attempt to rely on Rule 69 is misplaced. The two provisions governing judgments and Writs of Execution are not interrelated. The two provisions address fundamentally different procedural mechanisms. The Judgment statute is designed to provide notice to others regarding judgments against individuals and real property. First, the Registry of Judgments is person specific rather than property specific. It allows a person to search by name to determine if an individual owes any outstanding judgments. See Utah Code Ann. § 78-22-1.5. Second, the Judgment statute creates the procedure for obtaining a lien against real property. As the statute provides, a judgment lien is created by recording the judgment against real property through the county recorder's office. Those searching the title on real property can than easily determine if any outstanding liens exist by searching at the county recorder's office.

On the other hand, Rule 69 sets forth the procedures for obtaining a Writ of Execution. Rule 69 does not require a judgment lien prior to issuance, nor does it require filing in the Registry of Judgments. As such, Rule 69 does not lend any support to interpreting the Judgment statute in Utah Code Ann. § 78-22-1, *et seq.*

III. DEFENDANT CONCEDES THE LEGISLATURE INTENDED TO REQUIRE ONLY RECORDING A JUDGMENT IN ORDER TO CREATE A JUDGMENT LIEN.

Defendant avoids the Legislative history germane to this appeal by arguing the plain language is unambiguous. Although it is true that this court does not need to go beyond the plain language when the plain language is not ambiguous, both parties' conflicting interpretations suggest the statute's provisions may not be as clear as defendant would have this court believe. In the event this court finds the language in the statute ambiguous, this court should examine the legislative history in order to interpret the statute. See Schurtz v. BMW of North America, Inc., 814 P.2d 1108, 1112-15 (Utah 1991); Versluis v. Guaranty National Companies, 842 P.2d 865, 867 (Utah 1992).

Plaintiff produced evidence to the trial court and in its opening brief to this court which unequivocally indicates the Legislature meant to simplify the process for obtaining a judgment lien. The Legislature intended to create one repository of information regarding liens against real property–the county recorder's office. The 2001

amendments were an attempt to streamline the process for creating judgment liens and searching for judgment liens.

Defendant has not contested the Legislative history or intent. Instead, Defendant keeps pounding the table with his plain language of the statute argument. When interpreting the plain language, however, this court must give effect to Legislative intent and examine the background and purpose of the statute. See Versluis, 842 P.2d at 867. The purpose of the statute is to provide mechanisms for judgment creditors to collect debts owed to them. The statute is designed to facilitate the process of collecting judgments issued by this State's courts. Finally, the statute is designed to provide notice to others who may have an interest which needs to be protected.

Defendant, however, would interpret the statute to require a series of technicalities in order to create a judgment lien. Although the Registry of Judgments is no longer related to real property and title reports are prepared from information recorded against real property, defendant would insist that filing a judgment with the Registry of Judgments is a necessary prerequisite for creating a judgment lien. Other than being cumbersome, defendant's position makes no sense. Indeed, the Legislature conceded the process would mean some lost revenue, but it determined streamlining the process made more sense.

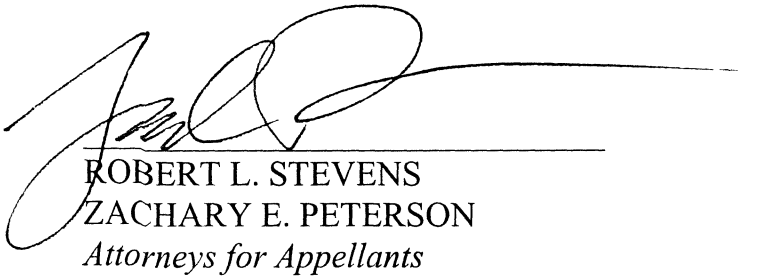
Defendant attempts to interpret the statute to create a cumbersome process in order to avoid paying his debt. Defendant has not contested the validity of the debt against him; he simply does not want to pay it. As such, he argues the statute should be interpreted in a manner contrary to the language of the statute and the Legislative intent. The result of defendant's interpretation would be a more cumbersome system, a more expensive search for title companies resulting in increased costs to those innocently trying to convey real property in this state, and a system which entraps creditors by forcing them to jump through a series of unrelated hoops. This court should give effect to the purpose of the statute, its plain language and the Legislative intent and interpret the statute to require a judgment only be recorded in the county recorder's office in order to create a judgment lien.

CONCLUSION

Based on the foregoing facts and authorities, plaintiff/appellant requests this court to reverse the trial court's interpretation of the judgment lien statute and reverse its grant of defendant's motion to quash.

DATED this 2 day of November, 2004.

RICHARDS, BRANDT, MILLER
& NELSON



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed via first class mail, postage prepaid on this 3rd day of November to the following:

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