

2003

David J. Allen v. Thomas K. Hall and Homecomings Financial Network, Inc. : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS
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DOCKET NO. 20030633-CA

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

REPLY BRIEF OF APPELLANT

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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Paulette Stagg
Clerk of the Court

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ARGUMENTS

I. THE DECREE OF DIVORCE DOES NOT RESTRICT SATTERFIELD'S RIGHT TO MORTGAGE OR TO SELL THE PROPERTY.

Appellee Homecomings alleges that the Decree of Divorce does not restrict Satterfield's right to mortgage or to sell the Property. Appellant Allen agrees.

It is undisputed that Satterfield received property rights to the Property pursuant to the Decree of Divorce. It is likewise undisputed that Satterfield could deal with her property rights in an unrestricted manner, including the sale or mortgage of those rights. To argue otherwise would be to argue a restraint on alienation by Satterfield of her property rights which may or may not have been enforceable. Under the Decree of Divorce, Satterfield had the unrestricted right to deal with her interest in the Property, but only her interest in the Property and no other.

At issue is the nature of Satterfield's property rights. Very simply, Satterfield had fee title to the property, subject to Appellant Allen's reversionary interest.

Appellee Homecomings quotes selectively from the Decree of Divorce no fewer than three (3) times as follows: "The Decree specifically provided that Sarah was awarded the Sandy Property 'as her sole and separate property subject to no claim by the plaintiff....'" What the Decree of Divorce actually says is that Satterfield was awarded the Property "as her sole and separate property subject to no claim by the plaintiff *except as set forth in this paragraph* [paragraph 10 of the Decree of Divorce]." [emphasis added]. Satterfield was awarded the Property subject to Appellant Allen's reversionary interest.

Any assignee, transferee or mortgagee choosing to deal with Satterfield could acquire no more than Satterfield had. Thus, any assignee, transferee or mortgagee of Satterfield could only acquire an interest in the Property subject to Appellant Allen's reversionary interest.

Appellee Homecomings makes the reverse argument that if Appellant Allen's reversionary interest were to have priority over subsequent mortgages, it would effectively limit post-divorce dealings with the property by Satterfield. In actuality, post-divorce dealings would be limited only if the party to those dealings was unwilling to take Satterfield's interest in the Property subject to Appellant Allen's reversionary interest. Coincidentally, this is what a reversionary interest is all about.

Appellee Hall argued in the lower court that he didn't know what he was doing in the acquisition of the Property and that Appellant Allen had a duty to protect him, ostensibly in part because Appellant Allen was experienced in real estate matters. Appellee Hall has chosen not to defend this appeal. However, Appellee Homecomings has picked up with Appellee Hall's same arguments. Appellee Homecomings argues that the recordation of a reversionary interest is not sufficient notice to an unwary lender and that Appellant Allen has the additional duty to somehow prevent Satterfield from dealing with her property rights in the Property. For the reasons stated above, Satterfield's rights in the Property are what they are and she was free to deal with them. The inescapable fact is that Appellee Homecomings is a national mortgage company with no small familiarity of real estate matters and it is

disingenuous for Appellee Homecomings to argue that this train wreck was Appellant Allen's fault.

Appellee Homecomings argues that the Decree of Divorce does not prohibit Satterfield from selling or mortgaging the Property and therefore the Decree of Divorce is ambiguous. For the reasons stated above, Appellant Allen agrees that the Decree of Divorce does not prohibit Satterfield from selling or mortgaging the Property. However, it is an unequivocal principle of real property law that an owner can convey no more rights than he has. The Decree of Divorce is not ambiguous, but clear on its face.

II. THE DISTRICT COURT ERRED IN ITS INTERPRETATION OF THE INTENT OF THE DECREE OF DIVORCE.

Appellee Homecomings argues that to enforce Appellant Allen's reversionary interest would unjustly enrich him. If this argument is taken to its logical extreme, a reversionary interest would be a property interest only for those who chose to recognize it. For those who chose to ignore it, a reversionary interest is not an interest. Appellee Homecomings chose to loan money to Satterfield, with the loan secured by Satterfield's interest in the Property. Appellee Homecomings should not be allowed to place its corporate head in the sand and claim that it did not know what interest Satterfield had in the Property or, worse yet, Appellant Allen is responsible for not protecting Appellee Homecomings from itself.

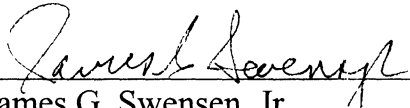
Appellee Homecomings alleges that Appellant Allen delayed in asserting his claim, thereby causing damage to Appellee Homecomings. Satterfield moved from Utah in July 1999 and shortly thereafter Appellant Allen made demand on Appellee Hall pursuant to the reversionary interest. When the parties were unable to reach a satisfactory resolution,

Appellant Allen commenced legal action in May 2000. Appellee Homecomings further alleges that had Appellant Allen commenced an action in January 1998, Appellee Homecomings would not have suffered any loss. The obvious flaw here is that Appellant Allen had no cause of action until Satterfield moved more than 50 miles from Salt Lake City, Utah, an event that did not occur until July 1999.

Based on the foregoing facts and arguments, Appellant Allen asks this Court to reverse the district court's ruling in this matter.

DATED January 17, 2004.

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J. Allen

ADDENDUM

No Addendum is necessary for this Brief.

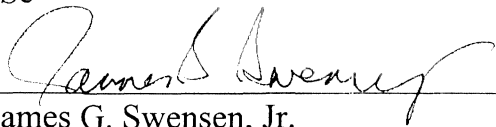
CERTIFICATE OF SERVICE

I certify that on January 27, 2004, I caused two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to be mailed, postage prepaid, to:

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