

SUPREME COURT OF NEBRASKA

Caruso v. Parkos

262 Neb. 961 (Neb. 2002) · No. No. S-00-498 · Decided January 4, 2002

SUMMARY

The Nebraska Supreme Court affirmed a district court judgment quieting title to real property in Susan Caruso. The court held that Virginia Parkos validly delivered a June 20, 1997, deed to Caruso and Carol Nattress, that the deed was not procured by undue influence, and that James Parkos had notice of the earlier conveyance before receiving and recording a later deed. Accordingly, the later deed was a nullity under Nebraska recording law.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 4, 2002
DOCKET	No. S-00-498
DISPOSITION	affirmed
PROCEDURAL POSTURE	James D. Parkos appealed from a district court judgment quieting title to real property in Susan Caruso after a trial on competing deeds.
STANDARD OF REVIEW	A quiet title action sounds in equity. The Nebraska Supreme Court reviews factual questions de novo on the record, while giving weight to the trial judge's credibility determinations when credible evidence conflicts on a material issue.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; binding precedent in Nebraska.
PARTIES	James D. Parkos v. Susan Caruso, formerly known as Susan Sevenker, Virginia M. Parkos

TOPICS

- quiet title
- deeds
- recording acts
- appellate procedure
- standard of review

PRACTICE AREAS

real estate

property law

appellate procedure

equity

QUESTIONS PRESENTED

1. Whether Virginia's June 20, 1997, deed was validly delivered before James received and recorded his competing deed.
2. Whether delivery was ineffective because Sikyta was Virginia's attorney rather than an escrow agent.
3. Whether the June 20 deed was procured by undue influence.
4. Whether James proved that he was a subsequent purchaser in good faith without notice under Neb. Rev. Stat. § 76-238.
5. Whether the district court's denial of James's motion for summary judgment was appealable or reviewable after trial.

HOLDINGS

1. The June 20 deed was validly delivered because Virginia intended the deed to presently transfer title and relinquished control over it by delivering it to Sikyta for recording.
2. The deed's delivery was not invalid merely because Sikyta was Virginia's attorney; the controlling question was whether Virginia intended to relinquish control and make the conveyance presently effective.
3. James failed to prove by clear and convincing evidence that the June 20 deed was the product of undue influence.
4. James was not entitled to protection as a subsequent purchaser in good faith without notice because the evidence established that he had actual notice, or at minimum notice of suspicious circumstances requiring inquiry, concerning the June 20 deed before he received and recorded his deed.
5. The denial of James's motion for summary judgment was neither appealable nor reviewable after a trial on the merits.

KEY QUOTATIONS

“The vital inquiry is whether the grantor intended a complete transfer whether the grantor parted with dominion over the instrument with the intention of relinquishing all dominion over it and making it presently operative as a conveyance of title to the land.” (357)

“Thus, title to the subject property passed from Virginia on June 20, and the October 27 deed purporting to convey the same property is a nullity.” (361)

FACTUAL BACKGROUND

Virginia M. Parkos owned a five-sevenths interest in real property, while her daughters Susan Caruso and Carol Nattress each owned one-seventh interests. On June 20, 1997, Virginia executed a warranty deed conveying her interest to Carol and Susan, and delivered it to her attorney, Curtis Sikyta, for recording; a second deed

conveying Carol's interest to Susan was executed on June 26. Before those deeds were recorded, Virginia executed and delivered a deed conveying the same property to her son James on October 27, which James recorded on October 29. The evidence showed that James knew of the June conveyance before receiving and recording his deed.

PROCEDURAL HISTORY

Caruso filed a quiet title action against Virginia and James Parkos concerning competing conveyances of the same real property. The district court overruled James's motion for summary judgment, conducted a trial, found that Virginia's June 20, 1997, deed had been delivered, was supported by consideration, was not the product of undue influence, and that James had notice of it before receiving and recording his October 27 deed. The district court quieted title in Caruso, and James appealed.

DISPOSITION

affirmed

CASES CITED

- Holmes v. Crossroads Joint Venture, 262 Neb. 98, 629 N.W.2d 511 (2001)
- McLain v. Ortmeier, 259 Neb. 750, 612 N.W.2d 217 (2000)
- Doe v. Zedek, 255 Neb. 963, 587 N.W.2d 885 (1999)
- Mueller v. Bohannon, 256 Neb. 286, 589 N.W.2d 852 (1999)
- Jeffrey Lake Dev. v. Central Neb. Pub. Power, 262 Neb. 515, 633 N.W.2d 102 (2001)
- Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994)
- In re Estate of Saathoff, 206 Neb. 793, 295 N.W.2d 290 (1980)
- Action Realty Co., Inc. v. Miller, 191 Neb. 381, 215 N.W.2d 629 (1974)
- Baye v. Airlite Plastics Co., 260 Neb. 385, 618 N.W.2d 145 (2000)
- Pike v. Triska, 165 Neb. 104, 84 N.W.2d 311 (1957)
- Bishop v. Hotovy, 222 Neb. 623, 385 N.W.2d 901 (1986)
- Cotton v. Ostroski, 250 Neb. 911, 554 N.W.2d 130 (1996)
- Goff v. Weeks, 246 Neb. 163, 517 N.W.2d 387 (1994)
- Miller v. Westwood, 238 Neb. 896, 472 N.W.2d 903 (1991)
- Craig v. Kile, 213 Neb. 340, 329 N.W.2d 340 (1983)
- How v. Baker, 223 Neb. 100, 388 N.W.2d 462 (1986)
- Mader v. Kallos, 219 Neb. 579, 365 N.W.2d 408 (1985)
- Winberg v. Cimfel, 248 Neb. 71, 532 N.W.2d 35 (1995)