

Court of Appeals No. 364305

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

HANS HENNINGS and KRISTINA HENNINGS, husband
and wife, and MARENGO, LLC, a Washington Limited
Liability Company,

Petitioner/Appellant,

vs.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY
COMPANY, a corporation of the State of Wisconsin, and
THE STATE OF WASHINGTON, and ALL OTHER
PERSONS OR PARTIES UNKNOWN claiming any right,
title, estate, lien, or interest in the real estate described in the
complaint herein.

Defendants/Respondent.

BRIEF OF PETITIONER/APPELLANT

Toni Meacham, WSBA 35068
Attorney for Appellants
1420 Scootney RD
Connell, WA 99326

TABLE OF CONTENTS:

I. Introduction	1
II. ASSIGNMENTS OF ERROR	3
Assignments of Error	
No. 1	3
Issues Pertaining to Assignments of Error	
No. 1	3
III. Statement of the Case	4
IV. Argument	4
A) Scope of Review	4
B) Appellants/Plaintiffs are entitled to their property as the ground has reverted back to them.	5
C) The reversionary interest was not specifically relinquished in the 1918 Deed between Davin and the Chicago, Milwaukee, & St. Paul Railway Company.	7
D) Case law and the fact that a deed can only convey what the Grantor has been granted.	9
V. Conclusion	11

TABLE OF AUTHORITIES

Table of Cases

<i>Alby v. Banc One Fin., 128 P.3d (Wash 2006)</i>	8, 9
<i>Furst v. Lacher, 149 Minn. 53 (1921)</i>	8
<i>King County v. Squire Investment Co., 49 Wn.App. 888, 802 P.2d 1022 (1990)</i>	6, 7
<i>Lawson v. State, 107 Wn.2d 444, 452, 730 P.2d 1308 (1986)</i>	6, 7, 10
<i>Lawson v. Redmoor Corp., 37 Wash.App 351 (1984)</i>	9
<i>Manufactured Housing Communities of Washington v. State, 142 Wn.2d 347, 13 P.3d 183, (2000).</i>	5
<i>Morsbach v. Thurston County, 152 Wash. 562, 278 Pac. 686 (1929)</i>	6
<i>Margola Assocs. v. City of Seattle, 121 Wash.2d 625, 634, 854 P.2d 23 (1993).</i>	5
<i>McInerney v. Beck , 10 Wash.515, 39 Pac.130 (1895)</i>	5-6
<i>Roeder Co. v. Burlington Northern, Inc., 105 Wash.2d at 571</i>	6

Regulations and Rules

RAP 2.4

4

I. Introduction

The Quit Claim Deed used by the State of Washington in an effort to obtain strips of land from a defunct and bankrupt Chicago, Milwaukee, & St. Paul Railway company to use as trails across our great state, did not actually grant Washington any rights.

The issue becomes one of any quit claim deed, that the Grantor can only convey the rights that grantor possesses. By the time the quit claim deed was recorded, Chicago, Milwaukee, & St. Paul Railway company, had stopped using the strips of land in question as a railway. This is not in dispute. Further, the grantor in this matter, could only grant to the State of Washington a right to use the land as a railway IF they still had that right, which they did not, as it had already been forfeited and reverted back to the original landowner.

The 1918 Deed should be examined at great length by this Court. Said 1918 Deed lists the terminology in the 1907 Deed, listing out the specifics of the conveyance of the "strip of land one hundred (100) feet in width....." Said 1918 Deed then lists out the conditions of the conveyance, meaning that the land had to be used within four years, said deed on page 2 then states that "said railway was constructed upon said strip of land within four years from the

date of said deed and has since been, and is, used and operated and....” The deed then goes on to release “CERTAIN CONVENANTS” and goes on to release the sidetrack and warehouse requirements. There is no mention of any release of the reverter interest. There is no “Whereas” specific to said interest. It should be noted that landowners of this time period may have deeded their land to the railroad, but getting a condition such as the reverter interest was a large boon as this was always an inequitable negotiation when the railroad came into an area. A reverter interest of this type would be the most important part of the deed itself, so believing that a document would release such a term without specific language to do so, is far fetched.

It is undisputed that the strip of land in question is no longer being used or operated as a railway. The strip of land, which was once used by the Chicago, Milwaukee, & St. Paul Railway Company as an active railway for many years, fell into disuse when the railroad went bankrupt. The deed allows for a reversion upon one (1) year of failing to operate and use the land for as a railroad, which occurred prior to the State of Washington's Quit Claim Deed. Said failure leads to the land being forfeited and reverting back to

the original owner, their successors, or assigns, hence, the Appellants in this matter.

II. Assignments of Error

Assignments of Error

1. Adams County Superior Court erred in entering the order at Summary Judgment heard October 22, 2018, granting the State of Washington's request to dismiss the Appellant's case in chief.

Issues Pertaining to Assignments of Error

The State of Washington sought an order against the Appellant's dismissing the case based upon the 1918 deed which the State of Washington alleges relinquished the Appellants' reversionary interest. The Court granted the order on October 22, 2018 finding that the reversionary interest had been relinquished even though said 1918 deed did not specifically relinquish the reverter interest. Did the Court error in granting the Summary Judgment Order when there is no "Whereas" specific to said interest in the 1918 deed? A reverter interest of this type would be the most important part of the deed itself, so believing that a document would release such a term without specific language to

was done in error by the Court at the Summary Judgment level.

(Assignment of Error 1.)

III. STATEMENT OF THE CASE

Appellants filed a Complaint seeking to quiet title a strip of land that had been conveyed to the CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY to be used as a railway in 1907 with a reverter interest in said document (CP 1-7). A Summary Judgment hearing was held on October 22, 2018 (RP beginning pg 5). An Order granting the State of Washington's Motion for Summary Judgment was entered that day after oral ruling in favor of the defendant, State of Washington (CP pg 390-391). The relief granted in that Order was based on the finding by the Court that the “reversionary interest is no longer extant, Plaintiffs do not possess such reversionary interest, and no reversion has occurred.” (CP pg 390). Appellants filed a Notice of Appeal with the Division III Appeals Court.

IV. ARGUMENT

A) Scope of Review:

Under RAP 2.4 the appellate court will review the decision designated in the notice of appeal, which in this case was the Order

Granting Summary Judgment for the State of Washington. When reviewing an appeal from summary judgment, an appellate court must employ the same analysis as the trial court, therefore looking to see if there are material issues as to fact in dispute. *Margola Assocs. v. City of Seattle*, 121 Wash.2d 625, 634, 854 P.2d 23 (1993). “Legal issues are reviewed de novo, and factual issues are reviewed in the light most favorable to the nonmoving party.” *Margola*, 121 Wash.2d at 634, 854 P.2d 23; *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183, (2000).

B) Appellants/Plaintiffs are entitled to their property as the ground has reverted back to them.

The 1981 quit claim deed, which conveys ground to the State of Washington can only convey the interest that the railroad had at the time of the sale. Due to the reversionary interest contained in the original deed to the railroad in the early 1900s, the quit claim deed to the State of Washington conveyed nothing. It was simply a piece of paper recorded which clouds the Plaintiffs' title to their land.

A quit claim deed only conveys whatever title the Grantor has in the land. *McInerney v. Beck*, 10 Wash.515, 39 Pac.130

(1895). In Washington State, if an easement is not used for the specified purpose for a period of time, it will be considered abandoned, extinguishing the easement. An easement in Washington State can also be abandoned if the document which established the easement provided for an “alternative method or methods to extinguish or alter the easement.” *Roeder Co. v. Burlington Northern, Inc.*, 105 Wash.2d at 571. “Where the particular use of an easement for the purpose for which it was established ceases, the land is discharged of the burden of the easement and right to possession reverts to the original land owner or to that landowner's successor in interest. *Id.*”

Our Supreme Court specifically held, “... a change in use from ‘rails to trails’ constitutes abandonment of an easement which was granted for railroad purposes only.” *Lawson v. State*, 107 Wn.2d 444, 452, 730 P.2d 1308 (1986). With such change in use, the right of way would automatically revert to the reversionary interest holders. *Id.*, at 452, (citing *Roeder Company v. Burlington Northern Inc.*, 105 Wn.2d 567, 716 P.2d 855 (1986) and *Morsbach v. Thurston County*, 152 Wash. 562, 278 Pac. 686 (1929)); see also, *King County v. Squire Investment Co.*, 49 Wn.App. 888, 802 P.2d 1022 (1990). An easement granted for a specific use is not a

perpetual easement for any use, where the change in use is inconsistent with the intent of the easement, the land passes back to the reversionary interest holders. *Lawson*, 107 Wn.2d at 449-50. A railroad easement established for use as a railroad, is extinguished the moment the railroad formally abandons railroad service as determined by proper authority. *King County v. Squire Investment Co.*, 59 Wn.App. 895.

It is not relevant when the railway was abandoned, before the Quit Claim Deed was recorded or after, the fact is that it was. The original deed automatically calls for a forfeiture of any right and for the land to revert back to the original landowner upon one year of failure to use and operate the line. This means that when that event took place, the land reverted back. The Quit Claim Deed conveyed no rights to the State of Washington.

C) The reversionary interest was not specifically relinquished in the 1918 Deed between Davin and the Chicago, Milwaukee, & St. Paul Railway Company.

The 1918 deed itself is clearly absent specific language relinquishing said interest (1918 deed is at CP 124-126). Further, from a historical standpoint, it makes sense to abandon the sidetrack and warehouse, which is specifically released in the 1918

deed, as there is no evidence that said sidetrack nor warehouse were ever built. The railroad, however, was being maintained and operated in 1918, over and across the property in question. The reversionary rights detailed in the 1907 deed were the sole recourse landowners had if the railroads failed to construct or abandoned the railbeds traversing the landowner's property. Specific language releasing reversionary rights to this railroad in operation is absent from the 1918 deed, and cannot be implied into the deed just to suit the State. Without specific language or evidence to show the release of the reverter, it was not possible for the State to prove that the reverter interest was released. Said interest was a specifically negotiated term of the Deed for the benefit of the Grantors. Said Grantors are the Appellants/Plaintiffs of this action and contend that the reverter interest is to their benefit which is why they brought this quiet title action. This is their land.

Reversionary interests are not new to Washington and are well documented. Where said language is unambiguous and clearly subjects the conveyance to an automatic reverter in the event that the railroad abandons the use of the property, such as in this case. *Alby v. Banc One Fin.*, 128 P.3d (Wash 2006); *Furst v. Lacher*, 149 Minn. 53 (1921). Restraints of this nature, where reasonable and

justified by the expectations of the parties are legitimate. *Lawson v. Redmoor Corp.*, 37 Wash.App 351 (1984). Washington Courts are not inclined to ignore precise terms in a deed that are properly recorded, placing subsequent “purchasers” on notice of the terms of the original deed, such as the reverter interest here, and are further reluctant to invoke common law principles disfavoring restraints to invalidate a bargain agreed to by the parties. *Alby v. Banc One Fin.*, 128 P.3d (Wash 2006). For the State to argue that the 1907 deed, with precise language conveying a reversionary interest with specific provisions regarding when the property would revert back to the original landowner, was released by the 1918 deed, that does not specifically release said interest, but does specifically mention the sidetrack and warehouse, simply does not work, the Court was wrong in granting the Motion for Summary Judgment when there was no specific language releasing said interest. The Appellants Plaintiffs are entitled to their land.

D. Case law and the fact that a deed can only convey what the Grantor has been granted.

We come back to the same issue: The State could not have an interest that the railroad could not convey. The railroad could only convey by the quit claim deed, the interests that the railroad

had, or were originally conveyed. States obtaining a trail system based on an original conveyance for a railroad, and conditioned upon such use, is a taking, not a rightful use. Our Supreme Court specifically held, "... a change in use from 'rails to trails' constitutes abandonment of an easement which was granted for railroad purposes only." *Lawson v. State*, 107 Wn.2d 444, 452, 730 P.2d 1308 (1986).

Not only is the 1918 deed absent specific language, but the Courts have long held that easements of this nature must be construed to the benefit of the original landowner, the Appellants/Plaintiffs in this matter. There is no ambiguity in the deed, and even if the Court finds that there is, said ambiguity must be granted in favor of the original landowners based on the original intent of the parties. The State "taking" this land from the Plaintiffs for use as a trail through a Quit Claim Deed which conveyed an empty and abandoned use, was never the intent of the parties. The Chicago, Milwaukee, & St. Paul Railway Company used this railroad for commerce until it went bankrupt many years later. The 1918 deed was used to clean up the original conveyance which had language specific to a sidetrack and warehouse. The clear and precise language of the 1918 deed releases only those intended

uses which were not developed, hence, the sidetrack and warehouse. Quiet titling this land back to the Appellants/Plaintiffs in this matter is what the law requires.

V. CONCLUSION

For the foregoing reasons, Appellants/Plaintiffs respectfully submit that (1) the court improperly granted the State of Washington's Motion for Summary Judgment on October 22, 2018. Appellants therefore respectfully request that the case should be remanded to the Superior Court for further proceedings on the issues stated above.

RESPECTFULLY SUBMITTED this ___th day of March, 2019.

/s/ Toni Meacham

Toni Meacham, WSBA 35068
Attorney for Appellant
1420 Scooteny Rd
Connell, WA 99326
509-488-3289