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Property Law - Estoppel by Deed, Partial Quitclaims - Walliker v. Escott

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CASE NOTES

PROPERTY LAW—Estoppel by Deed, Partial Quitclaims. Walliker v. Escott, 608 P.2d 1272 (Wyo. 1980).

On September 5, 1978, Kay Diana Escott and other plaintiffs commenced a suit to quiet title to the oil and gas underlying a tract of land in Park County, Wyoming.[1] Defendant George F. Walliker, Jr. answered and counterclaimed, claiming title in the same property as heir to the original entryman and patentee of the land, Geneva Walliker, who entered it in June, 1928, under the Carey Act.[2] The plaintiffs claimed oil and gas interests in the land under two deeds to Arthur Pearson and H. B. Robertson which Geneva Walliker had executed in July, 1928, two weeks after her entry. The deeds purported to remise, release, and quitclaim to Pearson and Robertson separate undivided one-third interests "to all oil and/or gas found or to be found on that certain lot. . . ."[3] At the time of these conveyances, Geneva Walliker had not made her final proof of reclamation of the land. Three years later she did so, and the State of Wyoming then issued her a patent.[4]

The dispute in this case concerned the effectiveness of the two deeds to transfer valid interests. George Walliker contended that entryman Geneva Walliker could not have conveyed any estate by the deeds, because in 1928, three years prior to receiving a patent, she had no title or interest to convey.[5] The district court agreed that in 1928 Geneva Walliker had nothing more than an expectancy of obtaining a patent to the land.[6] The court also determined that because the deeds were quitclaim deeds, Geneva Walliker and her heirs were not estopped from denying that they had title at the time of the attempted transfer.[7] Thus, when the patent ultimately issued to Geneva Walliker, it did not inure to the benefit of Pearson and Robertson through the doctrine of

1. Brief for Appellant at 2, Walliker v. Escott, 608 P.2d 1272 (Wyo. 1980).
2. *Id.* at 2-4.
3. Opinion letter re: Escott v. Walliker, Civil No. 11141, Fifth Judicial District, County of Park, State of Wyoming, (July 5, 1979), at 1.
4. Walliker v. Escott, 608 P.2d 1272, 1273 (Wyo. 1980).
5. Opinion letter re: Escott v. Walliker, *supra* note 3, at 1.
6. *Id.* at 2.
7. *Id.* at 2-3.

estoppel by deed. Nonetheless, the court granted plaintiffs' motion for summary judgment on the theory that when a patent issues to a homesteader on government land, it "relates back" to transfer title as of the date of the original entry, thus perfecting any conveyance made by the homesteader after the earlier date.[8] Under this theory, the 1928 conveyances by Geneva Walliker became effective when she acquired the patent in 1931, and the plaintiffs acquired valid estates as successors-in-interest to Pearson and Robertson.

On appeal, the defendant argued that Sections 34-2-104 and 34-2-105 of the Wyoming Statutes[9] foreclose the application of relation back, because the two statutes reveal a clear legislative intent that a quitclaim deed should not operate to transfer title which the grantor acquires after the execution of the deed.[10] The Wyoming Supreme Court affirmed the judgment of the district court,[11] holding that a deed which quitclaims only a fractional mineral interest is not a quitclaim deed under the statutes, and thus there was no statutory bar to applying relation back in this case.[12] In reaching this holding, the court purported to follow the precedent set in two Wyoming cases, *Roberts v. Hudson*, and *Tendolle v. Eureka Oil Syndicate*, concerning the application of the doctrine of relation back.[13] It declined to discuss

8. Walliker v. Escott, *supra* note 4, at 1273-74.
9. WYO. STAT. § 34-2-104 (1977), provides:
Quitclaim may be in substance in the following form:
Quitclaim Deed.
A.B., grantor (here insert grantor's name or names, and place of residence) for the consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate, (here insert description) situate in the county of _____, in the state of Wyoming.
WYO. STAT. § 34-2-105 (1977), provides:
Every deed in substance in the form prescribed in the foregoing section [§ 34-2-104], when otherwise duly executed, shall be deemed and held a sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention.
These sections are in every relevant respect identical to the versions in effect in 1928, 19 WYO. COMPILED STATS. §§4617-4618 (1920).
10. Walliker v. Escott, *supra* note 4, at 1274.
11. *Id.* at 1278.
12. *Id.* at 1275-76.
13. *Id.* at 1275; Roberts v. Hudson, 25 Wyo. 505, 173 P. 786 (1918); Tendolle v. Eureka Oil Syndicate, 38 Wyo. 442, 268 P. 185 (1928) [hereinafter cited in text as *Tendolle*].

the applicability of estoppel by deed, apparently satisfied with the adequacy of the relation back theory, and with the trial court's determination that Geneva Walliker's deeds did not raise an estoppel.

This note will examine the doctrine of estoppel by deed as developed in Wyoming case law, and show how it could support the result reached in *Walliker v. Escott.*[14] It will then discuss the statutory issue raised in *Walliker*, and show that the court's holding unnecessarily complicates the law. Finally, the note will suggest how the statutes and the common law doctrine may be reconciled.

ESTOPPEL BY DEED AND QUITCLAIM DEEDS

By the common law doctrine of estoppel by deed, a deed can have the effect of transferring a title which the grantor subsequently acquires. When applicable the doctrine operates to estop the grantor from denying that he had title at the time of the transfer.[15] If the deed as a whole reveals an intent to pass a definite estate, the doctrine can apply,[16] but it does not apply to a true quitclaim deed.[17] The distinguishing feature of a quitclaim deed is that it conveys the grantor's interest in the property rather than the property itself.[18] Such a deed implies no definite estate or interest in the grantor, and conveys only the grantor's right, title and interest at the time of execution.[19] It does not raise an estoppel in the grantor to effect a passing of after acquired title to the grantee.[20]

This common law rule that a quitclaim deed does not raise an estoppel is reflected in Sections 34-2-104 and 34-2-105 of the Wyoming Statutes.[21] Section 34-2-104 provides that a quitclaim "may be in substance in the following form,"

14. Walliker v. Escott, *supra* note 4 [hereinafter cited in text as *Walliker*].
15. 23 AM. JUR. 2d *Deeds* § 294 (1965).
16. Balch v. Arnold, 9 Wyo. 17, 59 P. 434, 436 (1899).
17. *Id.* at 28-29; Sharples Corporation v. Sinclair Wyoming Oil Co., 62 Wyo. 370, 168 P.2d 565, 566 (1946).
18. Balch v. Arnold, *supra* note 16, at 435; Annot., 3 A.L.R. 945 (1919).
19. Balch v. Arnold, *supra* note 16, at 435.
20. *Id.* at 28-29; Sharples Corporation v. Sinclair Wyoming Oil Co., *supra* note 17, at 566.
21. WYO. STAT. §§ 33-2-104 and 34-2-105 (1977).

and gives a model.[22] Section 34-2-105 says that any deed which "in substance" conforms to the model will convey the then existing legal or equitable rights of the grantor "but shall not extend to after acquired title unless words are added expressing such intention."[23] Neither statute states that to be a quitclaim deed, the deed must conform to the statutory model; the statutes only go so far as to say a quitclaim deed *may* be in the form indicated. Nor does either statute imply that nonconforming deeds will pass after acquired title. Thus, a deed not conforming to Section 34-2-104 should still be subject to the common law rules; if it conveys nothing more than the grantor's interest, no after acquired title should pass by way of estoppel.

In *Walliker*, the Wyoming Supreme Court held that two deeds purporting to remise, release and quitclaim undivided one-third interests in oil and gas did not substantially conform to Section 34-2-104, and therefore did not trigger the effect prescribed in Section 34-2-105.[24] However, the court did not determine whether the deeds were quitclaim deeds which could not raise an estoppel under common law, but held that the grantor's after acquired title passed to the grantees under the relation back theory.[25] The alternative would have been to find that the deeds were not true quitclaim deeds under common law, and that the after acquired title therefore inured to the grantees by way of estoppel by deed. The court might then have proceeded along the lines of the following analysis.

The ultimate criterion for determining whether a deed is a common law quitclaim deed is the intent of the parties as revealed by the deed itself and by the surrounding circumstances.[26] The wording of the granting clause and the presence or absence of title covenants or an habendum clause have been ruled relevant to show whether the intent of the deed is to convey the property itself or merely grantor's

22. WYO. STAT. § 34-2-104 (1977).
23. WYO. STAT. § 34-2-105 (1977).
24. Walliker v. Escott, *supra* note 4, at 1275-76.
25. *See* text accompanying notes 7-12, *supra*.
26. Sharples Corporation v. Sinclair-Wyoming Oil Co., *supra* note 17, at 568.

present interest in the property.[27] In relevant part, the *Walliker* deeds read as follows:

> [T]he party of the first part . . . has Remised, Released and Quit-Claimed . . . an undivided one-third interest in and to all oil and/or gas found or to be found on that certain lot . . . Together with all and singular the tenements hereditaments and appurtenances thereunto belonging. . . .
>
> TO HAVE AND TO HOLD, ALL and singular the above mentioned and described premises. . . .[28]

This deed uses only words of quitclaim in the granting clause, and lacks title covenants, yet it appears to convey not just grantor's interest in the oil and gas, but a definite one-third interest in the oil and gas. The habendum clause also evidences the intent to convey a definite estate. The question then arises as to which of these indicia of intent should be regarded as controlling. In *Tendolle*[29] the Wyoming Supreme Court examined a deed very similar to this one and determined that the deed was not a quitclaim deed. While the *Tendolle* deed is distinguishable in that the granting clause includes the words "grant," "bargain," and "sell" in addition to "release" and "quitclaim," the court there said that the words of grant were "not in our opinion so important as the fact that the deed purports to transfer a definite, specific interest."[30] The interest conveyed was, as in the *Walliker* deeds, a fractional mineral interest, and the deed contained a similar habendum clause.[31] Thus *Tendolle* supports the conclusion that, facially, the *Walliker* deeds show an intent to transfer more than grantor's interest, and thus are not quitclaim deeds.

As previously noted, an examination of the circumstances surrounding the execution of a deed may help to determine its intent. For example, the Wyoming Supreme Court in *Sharples Corporation v. Sinclair Wyoming Co.*[32] considered the effect of a deed facially very close to the the

27. *Id.* at 567-69; Balch v. Arnold, *supra* note 16, at 436.
28. Opinion letter re: Escott v. Walliker, *supra* note 3.
29. Tendolle v. Eureka Oil Syndicate, *supra* note 13.
30. *Id.* at 450.
31. *Id.* at 446.
32. Sharples Corporation v. Sinclair Wyoming Oil Co., *supra* note 16.

Tendolle and *Walliker* deeds. The deed purported to "remise, release and quitclaim" a fractional mineral interest in certain lands. It contained an habendum clause, but no covenants of warranty.[33] While the court took a restrictive view of the conveyances that will give rise to an estoppel,[34] it did not hold that the features of the deed alone precluded an estoppel. Instead, it found the underlying circumstances dispositive. The deed had been executed by a trustee whom prior owners had set up as a "straw man" to redistribute their interests through a sequence of conveyances.[35] The court noted that the trustee "was hardly in a position to give any other kind of a deed [other than a quitclaim deed],"[36] and that "[n]o purchase or sale in the ordinary way was contemplated."[37] The court went on to say that *even if* the deed was more than a quitclaim deed, there was no justification for applying the doctrine of estoppel to pass after acquired property.[38] Thus, in deciding whether to apply estoppel, the court considered the circumstances of the original grant to be as important as the facial features of the deed.

In *Walliker*, the undisputed facts do not disclose the parties' understanding as to the state of title or the interest to be conveyed. Yet it is appropriate to ask, as Justice Cardozo once did, "Was it all sound and fury, signifying nothing?"[39] Considering that Geneva Walliker was in the process of obtaining a fee interest from the government when she executed the deeds to Pearson and Robertson,[40] it is logical that the parties would have expected the after acquired title to pass. It would be absurd to conclude that they intended the deeds to convey Walliker's present interest only, since, barring fraud, the parties would have known that an effectuation of that intent could accomplish nothing. The *Walliker* court disapproved such a conclusion, noting that

33. *Id.* at 567.
34. *Id.* at 569.
35. *Id.* at 566.
36. *Id.* at 568.
37. *Id.* at 569.
38. *Id.* at 570.
39. Outlet Embroidery Co., Inc. v. Derwent Mills, Ltd., 254 N.Y. 179, 172 N.E. 462 (1930). *C.f.*, *Macbeth*, V.iii.
40. Walliker v. Escott, *supra* note 4, at 1273.

nothing in the record evidenced that the grantees "intended to engage in a futile act in obtaining the quitclaim deeds."[41]

An examination of the *Walliker* deeds and the circumstances of their execution thus raises the inference that the parties intended a conveyance of a definite estate and not merely a release of the grantor's then existing estate. This inference then constitutes a basis on which the court might have held that Geneva Walliker and her heirs were estopped from denying that she had title when she executed the two deeds. Thus estoppel by deed provides an alternate rationale for the court's holding that the *Walliker* grantees obtained good title once Geneva Walliker perfected her own interest in the land.

THE STATUTORY ISSUE IN WALLIKER

In *Walliker*, the Wyoming Supreme Court affirmed the district court's holding that Geneva Walliker's patent related back to the date on which she entered the land.[42] The deeds issued subsequent to entry were then operative to pass title to the grantees, Pearson and Robertson. In reaching this result, the court faced the question whether Sections 34-2-104 and 34-2-105 could foreclose the operation of relation back to transfer after acquired title. If "after acquired title" in Section 34-2-105 includes title which a homesteader on government land is in the process of obtaining, then the title obtained upon issuance of a patent should not relate back to benefit a grantee under a prior quitclaim deed, so long as the deed is "in substance in the form prescribed. . . ."[43] This was the argument submitted by the appellant, George Walliker.[44] The court obviated the argument by distinguishing the *Walliker* deeds from the statutory form, thus rendering the question moot. It said that a deed quitclaiming a fractional mineral interest is not a quitclaim deed within the meaning of Section 34-2-105.[45] In distinguishing the deeds, the court emphasized the *partial* release of grantor's

41. *Id.* at 1278.
42. *See* text accompanying notes 7-12, *supra*.
43. WYO. STAT. § 34-2-105 (1977).
44. *See* text accompanying notes 9-10, *supra*.
45. Walliker v. Escott, *supra* note 4, at 1275-76.

interest in the *Walliker* deeds, noting that the statutory model calls for a release of grantor's *entire* interest.[46] The court justified this distinction in terms of the grantee's expectations; where a grantor has released his entire interest, there remains no implication of any equitable right in the grantor capable of ripening into a legal title which would then pass to the grantee. Therefore a grantee under such a deed has no legitimate expectation of perfecting his interest through any doctrine of after acquired title. On the other hand, when a grantor merely quitclaims a partial mineral interest while retaining equitable surface rights, a grantee can logically expect the grantor to eventually perfect legal title and thereby perfect grantee's mineral interest.[47] In support of its result, the court cited *Tendolle*,[48] where a similar tactic was employed to avoid the same question, *i.e.*, whether the two statutes affect the operation of relation back. The *Tendolle* court determined that the deed involved was not a quitclaim deed, without making any distinction between quitclaim deeds under the statutes and under common law. The court then concluded that the statutory effect was not triggered.[49]

At first blush the *Tendolle* and *Walliker* holdings appear congruent. Both say, in effect, that a deed quitclaiming a fractional mineral interest does not fall within Sections 34-2-104 and 34-2-105. Nevertheless, the rationale adopted in *Walliker* departs substantially from that developed in *Tendolle*, and could lead to a different result in other cases. *Tendolle* hinges on the distinction between a deed purporting to convey only the grantor's interest in a property, and a deed purporting to convey the property itself.[50] This comports with the common law notion that a quitclaim deed is one which conveys only the grantor's interest; the court in *Tendolle* seemed to read the common law definition into the statutes. On the other hand, the court in *Walliker* makes a new distinction between a deed which purports to convey

46. *Id.* at 1274-75.
47. *Id.*
48. Tendolle v. Eureka Oil Syndicate, note 13, *supra*.
49. *Id.* at 449-50.
50. *See* text accompanying notes 29-31, *supra*.

the grantor's *entire* interest, and a deed which purports to convey only *part* of the grantor's interest.

The following examples show that the *Walliker* holding departs substantially from *Tendolle* in its effect:

O "quitclaims" to *A*
1) "Blackacre in fee simple absolute."
2) "an undivided one-fourth interest in the oil and gas in place in Blackacre."
3) "an undivided one-fourth of any mineral interest in place which I have in Blackacre."
4) "all my interest in the oil or gas in place in Blackacre."

In (1) *Tendolle* controls, so that despite the quitclaim language, and despite *O's* conveying his entire interest, the deed cannot be a quitclaim deed because it purports to convey a specific estate, *i.e.* "Blackacre in fee simple absolute."

Tendolle would also suffice to determine that (2) is not a quitclaim either. Again the language purports to convey a specific estate regardless of the grantor's interest. On the other hand, *Walliker* would merely indicate that since (2) quitclaims only a fractional mineral interest, it does not substantially conform to the statutory model. *Walliker* leaves open the question whether (2) might qualify as a quitclaim deed under common law. Thus whereas *Tendolle* leaves room for reading the statutory form quitclaim as equivalent to a common law quitclaim deed, *Walliker* implies a severance of the two.

In (3) the severance becomes clear. *Tendolle* and common law would undoubtedly classify this conveyance as a true quitclaim, because it purports to convey no more than the grantor's interest. *Walliker* simply adds that this deed, a true quitclaim deed for most purposes, does not release *all* of the grantor's interest and therefore does not substantially conform to the statutory model. This result does not seem to be supported by anything in *Tendolle*, and marks the point at which *Walliker* departs from precedent.

In (4) grantor releases all of, but no more than, grantor's interest in the described property. The conveyance should therefore meet the criteria of both *Tendolle* and *Walliker* as regarding conformance with the statutory form, barring of course all external considerations such as any other language in the deed or attendant circumstances.

Unlike *Tendolle*, *Walliker* reaches divergent results in (3) and (4). Under *Walliker*, if O's deed purports to quitclaim "all my interest in the oil or gas in place in Blackacre," the deed should be held a quitclaim deed within Section 34-2-104, but if it purports to quitclaim "an undivided one-fourth of any mineral interest in place which I have in Blackacre," it should not be so held. While a literal reading of the statute supports this distinction, there seems to be no reason for it inherent in the nature of the grants. Nothing in the court's discussion of the grantee's expectations as regards the grantor's future perfection of title[51] offers any clue to why different results should obtain in (3) and (4).

The *Walliker* deeds fall squarely in the category represented by (2) above; they purport to convey a specific interest consisting of a fraction of the whole mineral estate. Thus, as shown in (2), the criterion developed in *Tendolle* suffices to determine that the deeds are not quitclaim deeds, and thus do not invoke the two quitclaim statutes. The *Walliker* court's rationale and holding add nothing to this result except a distinction between quitclaim deeds under the statutes and quitclaim deeds at common law. This distinction is cast in terms of whether or not the deed conveys the grantor's entire interest. Yet, as shown in the examples, the distinction is unnecessary to decide the case and unnecessarily complicates the construction of the statute.

CONCLUSION

Wyoming Statutes Sections 34-2-104 and 34-2-105 seem to have the purpose of legitimizing what was already true at common law, *i.e.* quitclaim deeds do not pass after-acquired title by estoppel. The presence of a model quitclaim in the

51. *See* text accompanying note 46, *supra*.

statutes enables the drafter of a deed to proceed with greater certainty of the deed's effect than he would have following common law principles alone. However, both statutes expressly refer to the "substance" of the model deed.[52] What constitutes "substance" is not further defined. It seems redundant to set up a statutory standard for quitclaim deeds wholly separate from a common law standard, unless there exists some reason the two should produce different results. This suggests that an efficient construction of the statute might include a reading-in of the common law tests, so that a deed conforming "in substance" with the statutory model would be equivalent to one passing as a quitclaim deed at common law. For the time being, however, the *Walliker* holding forecloses this reading, so that the determination of whether a deed is a quitclaim must remain a two-step process.

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52. WYO. STAT. §§ 34-2-104, 34-2-105 (1977).