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Clouded Titles in Community Property States: New Mexico Takes a New Step

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CLOUDED TITLES IN COMMUNITY PROPERTY STATES: NEW MEXICO TAKES A NEW STEP

COMMUNITY PROPERTY LAW–ADVERSE POSSESSION–LAND GRANT TITLES: Wife held not indispensible party in quiet title action to possible community real property when husband, claiming adverse possession, is the only party named in document establishing color of title. *Mundy & Mundy, Inc. v. Adams,* 93 N.M. 534, 602 P.2d 1021 (1979).

New Mexico's growing importance as a producer of energy related resources, combined with its increasing appeal as one of the sunbelt states, has brought to the forefront in the state the question of free alienability of land. The problem, which has its roots in New Mexico's early colonial and territorial history,[1] is caused by the extraordinarily frequent incidence of unclear land titles. One reason for title uncertainty in this community property state is the failure of husbands to join their wives in conveyances of real property.[2] An analysis of the land title problems in one of the approximately 34 community grants in New Mexico,[3] revealed that 79 percent of all the titles were afflicted with this malady.[4] The increasing demand for energy related resources, and for land, dictates the need for a clear solution. In *Mundy & Mundy, Inc. v. Adams,*[5] a case arising within the Tierra Amarilla land grant, the New Mexico Supreme Court addressed the problem of failure to join a wife in conveyance of real property. While the wife's community property interest was ultimately extinguished in this action, the court's method of curing the problem may prove more troublesome than the problem it sought to alleviate.

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1. DuMars & Rock, *The New Mexico Legal Rights Demonstration Land Grant Project–An Analysis of the Land Title Problems in the Santo Domingo de Cundiyo Land Grant,* 8 N.M.L. REV. 1, 1 (1977-78).

The authors explain that the problem of uncertain land titles in New Mexico are a result of neglected legal formalities, civil law formalities and principles which have often been misunderstood by lawyers trained in the common law, and confusion as to the validity of property claims of former Mexican and Spanish citizens.

2. This results in a cloud on the title because, in community property states, the signatures of both husband and wife are required to convey community real property. *See, e.g.,* N.M. STAT. ANN. § 40-3-13 (1978).

3. DuMars & Rock, *supra* note 1, at 4.

4. *Id.* at 21.

5. 93 N.M. 534, 602 P.2d 1021 (1979). The Adams have recently filed suit in District Court raising new issues.

BACKGROUND

The New Mexico Supreme Court explained the facts in *Mundy* as follows.[6] In 1928 Enetro and Delfinia Velasquez moved onto a tract of land known as the Payne Parcel in northern New Mexico. Taxes were paid continuously in their name for 50 years, from 1928 through 1978. In 1946 Enetro received and recorded a "documento" from the Tierra Amarilla Land Grant, Corporacion de Abiqui, purporting to convey the Payne Parcel to him.

In 1957, Payne Land and Livestock Company, basing its claim on a separate chain of title, filed suit in the U.S. District Court for the District of New Mexico against Enetro for possession of the property.[7] Mrs. Velasquez was not a party to the action. A judgment, approving a stipulation between Payne and Enetro, was entered in that suit. The stipulation gave Enetro and Delfinia a life estate in the property for as long as they continued in possession. This judgment was recorded with the county clerk of Rio Arriba County in 1960 and again in 1976. In 1962, Enetro and Delfinia conveyed the property in fee simple to their sons Isaac and Frutoso, but continued to reside on the premises until their deaths.[8]

Mundy & Mundy, Inc. subsequently purchased the property from Payne and in 1978 brought an unlawful detainer suit in New Mexico State court, seeking possession of the Payne Parcel against the heirs of both Enetro and Delfinia. These heirs were living on the property at the time of the unlawful detainer action. Several other heirs of the Velasquez family intervened and counterclaimed, alleging ownership of a larger tract which encompassed the Payne Parcel, known as the Hicks Survey Parcel.[9]

THE NEW MEXICO TRIAL COURT

On the above facts, the New Mexico trial court found that the Velasquez heirs were owners in fee simple of the Hicks Survey Parcel.[10] It also found that Enetro and Delfinia had held the property as community property, and that the 1957 federal judgment was void, particularly as to Delfinia, due to the failure to join her as a party.[11] The court concluded that any interest of Enetro's was com-

6. 93 N.M. at 535, 602 P.2d at 1022-23.

7. Payne's interest rested on a claim of superior title. Appellant's Brief at 16, Mundy & Mundy, Inc. v. Adams, 93 N.M. 534, 602 P.2d 1021 (1979).

8. Enetro died in 1974 and Delfinia died in 1975.

9. The Payne Parcel consists of 109.6 acres situated within the Hicks Survey Parcel. The Hicks Survey Parcel is 201.578 acres. The discrepancy in size is due to a shift in the Brazos River, the northern boundary of the property.

10. 93 N.M. at 536, 602 P.2d at 1023.

11. *Id.*

munity property by intent, transmutation, commingling, "and otherwise."[12] Finally, the court held that if Enetro's and Delfinia's title was invalid, the heirs in possession had perfected their title, through adverse possession, by holding the land from 1962 through 1976, thus extinguishing the interest obtained by the 1957 judgment.[13] Mundy & Mundy, Inc. appealed.

THE NEW MEXICO SUPREME COURT

Court of Appeals Judge Mary Walters, sitting by designation, wrote the opinion for the New Mexico Supreme Court. Although the opinion is divided into three parts, only the first two are pertinent to this note.[14]

In part one, the court stated that Delfinia could not have been an indispensable party[15] in the 1957 suit unless she and Enetro had established a community property title by adverse possession prior to 1957.[16] The court noted that under the applicable 1953 statute proof of three essential elements are necessary to satisfy a claim of title by adverse possession:[17] 1) the claim must be made "in good faith under color of title";[18] 2) for 10 years the claimant's possession must consist of "actual and visual appropriation of land, commenced and continued under color of title and claim of right inconsistent with and hostile to the claim of another";[19] 3) and the claimant, his predecessor, or grantors, must have continuously paid all taxes assessed against the property during the 10 year period.[20] The court rejected the argument that Enetro and Delfinia had established a community property title by adverse possession prior to 1957,[21] because the color of title conveyed title to Enetro only. Furthmore, Enetro's answer to the 1957 complaint did not raise the defense of failure to join an indispensible party, alleging only that he was the owner in fee simple by reason of his adverse possession. The court concluded that his answer established his denial of community property.[22] Finding that the issue of Enetro's adverse possession claim

12. *Id.*
13. *Id.*
14. In the third part of the opinion the court examined the language of the 1957 stipulation and found it adequate to create a joint life estate in Enetro and Delfinia, leaving the Payne Company with a vested remainder. *Id.* at 538-39.
15. *See* N.M.R. Civ. P. 19 (1978). The rule now refers to "persons to be joined if feasible" rather than "indispensible party."
16. 93 N.M. at 537, 602 P.2d at 1024.
17. *Id.*
18. N.M. STAT. ANN. § 23-1-22 (1953).
19. *Id.*
20. *Id.*
21. 93 N.M. at 537, 602 P.2d at 1024.
22. *Id.*

and any defenses he might have raised were at issue in 1957[23] and were ultimately settled the court apparently felt they were *res judicata* and could not be raised again, even by Delfinia.

In the second part of the opinion, the supreme court concluded that the trial court decision may have rested on the assumption that the federal court had not addressed the issue of adverse possession in Delfinia.[24] Thus, Delfinia's heirs could raise, at trial, her title by adverse possession prior to 1957. But this reasoning was rejected on appeal because of the total lack of evidence that Delfinia had any color of title sufficient to initiate a claim of adverse possession in herself, or as a possessor in community property.[25]

The court further found that Delfinia's only basis for a community interest as an adverse possessor depended upon such an interest first being found in Enetro.[26] Enetro's abandonment of his claim, in an action to which Delfinia was not a party, destroyed the basis for any claim she might make. The federal judgment extinguished Enetro's claim in the court's view, and the issue could not be relitigated.[27]

PROBLEMS WITH THE DECISION

In parts one and two of its opinion, the court repudiated the claims of the Velasquez heirs based on their inheritance of Delfinia's community property interest because the documento establishing color of title was in Enetro's name only. Prior New Mexico case law is far from clear that this should have been fatal to their claims. There is ample authority in the state that property acquired during marriage in the husband's name only is nevertheless community property. "All property acquired by either husband or wife or both, after marriage is presumed to be community property. Included within this is the presumption that property acquired by a married man in his name alone is community property."[28] Therefore, Delfinia, and thus the Velasquez heirs, conceivably held a valid community property claim that the New Mexico Supreme Court did not even discuss.

The Velasquez title would have vested at the end of a 10 year period of possession beginning in 1946.[29] This means that the Velasquez title vested prior to the 1957 suit. If the title vested, it vested as com-

23. *Id.* at 538, 602 P.2d at 1025.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. J. WOOD, THE COMMUNITY PROPERTY LAW OF NEW MEXICO (1954).
29. *See* Maxwell Land Grant Co. v. Dawson, 151 U.S. 586, 606 (1894).

munity property, and Delfinia's signature was required for any legal conveyance of the property.[30]

The supreme court should have considered the question of acquisition as community property separate from the question of who was named in the document establishing color of title. In short, if title to the property vested in the community, the fact that only one spouse was named on the deed may have been irrelevant. The court should have asked first whether title in the property was acquired by adverse possession. If so, was the color of title sufficient for the property to have been acquired as community property?

The court should have also considered what the documento purported to grant. If, as argued by appellants,[31] it purported to create an heirship interest in Enetro, it is plausible that the property was acquired as separate property by Enetro. Property acquired by "gift, bequest, devise or descent, . . ." is acquired as separate property in New Mexico.[32] If, however, the documento purported to grant a fee simple title other than by gift, bequest, devise or descent, the law is clear that it would have been acquired as community property.[33]

IMPLICATIONS

Clouded titles resulting from the failure to join a wife in a conveyance of property are a recurring obstacle in attempts to clear titles held through land grants.[34] Looking at the Santo Domingo de Cundiyo Land Grant as an example, one can see that this problem is of immense proportions. As noted earlier, a study on the Cundiyo Grant showed that 79 percent of all the titles on the grant were affected by the failure to join the wife in a conveyance; the effect there was to leave hundreds of unresolved interests within the grant.[35]

A literal interpretation of the *Mundy* decision casts serious doubt on the validity of titles held by spouses or as heirs of spouses with community property interests. Their ability to quiet title based on adverse possession may be seriously impaired; in turn, their right of ownership of the land and their right of alienation are also gravely impaired. The prospect of increased litigation over the validity of their land titles is a real threat. The injury caused by the increased litigation is compounded by the fact that owners of small parcels

30. WOODS, *supra* note 28, at 73.
31. Appellant's Reply Brief at 4.
32. N.M. STAT. ANN. § 57-3-5 (1953).
33. *Id.* § 57-3-1.
34. DuMars & Rock, *supra* note 1, at 21.
35. *Id.*

within land grants are often the rural poor who can least afford legal entanglements.[36]

CONCLUSIONS

In the *Mundy* decision, the New Mexico Supreme Court could have addressed and answered many problems at the root of clouded titles in community property states, particularly questions pertaining to the protection of a wife's interest in community property gained through adverse possession. Unfortunately, the decision fails to address some of these issues. The court chose to base its decision on a rather fine point: the absence of Delfinia's name in the color of title. From its inception, the community property law of New Mexico appears to have been concerned with the protection of the interests of the wife.[37] By limiting its inquiry to who was named in the documento and to what action Enetro did or did not take rather than addressing Delfinia's community property interest and whether the title vested at all, the court ignored this basic tenet of community property law. Further the uncertain titles put a restraint on the alienability of land which may result in a loss of development of much needed energy resources. The implications of this decision bode ill for many heirs who hold title through inherited community property interests. The cloud on their title can be lifted if, in the next case involving this type of title, the court finds that an heir who holds title under these circumstances has a valid title.

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36. Interview with Pamela B. Minzner, Professor of Law, U.N.M. School of Law and Co-director of Remote Land Claims Impact Study, in Albuquerque, N.M. (April 1, 1981).

37. J. WOOD, *supra* note 28, at 12-13.