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Summary of Keife v. Logan, 119 Nev. Adv. Op. No. 41

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***Keife v. Logan*, 119 Nev. Adv. Op. No. 41 (August 28, 2003).¹**

PROPERTY LAW – APPEALS

Summary

Appeal from an order of the Second Judicial District Court, State of Nevada, finding that Defendant and underlying landowner was the rightful owner of a former railroad right-of-way under 43 U.S.C.S. §912, because the underlying landowner had purchased the underlying land and right-of-way from the railroad, which had been granted the right-of-way by the United States.

Disposition/Outcome

Affirmed. When a railroad company abandons a right-of-way, the reversionary interest in the right-of-way vest in the underlying landowner who establishes title to the land underlying the right-of-way.

Factual and Procedural History

In 1864, the United States granted several lands, including the right-of-way in dispute to the Central Pacific Railroad Company.² Title to the Plaintiff's land, which is adjacent to the disputed land, was part of the original Central Pacific land grant. Defendant, Logan, purchased the right-of-way and underlying land from Southern Pacific, Central Pacific's successor in interest.

Plaintiff purchased the property adjacent to the property in dispute in 1971. Plaintiff acknowledges that he did not own the land underlying the right-of-way.

The district court found that the right-of-way was conveyed as "a limited fee with the right of reverter." The district court also found the Southern Pacific abandoned the right-of-way in 1987, as evidenced by its non-use, removal of tracks, negotiations to sell, and clear intention to dispose of the property. The disposition of abandoned railroad grants is governed by 43 U.S.C. § 912 (1964).³ Plaintiff claims that the property reverted to him as the adjacent landowner; the district court rejected this claim and concluded that the defendant, Logan, is the rightful owner of the underlying land and right-of-way.

¹ By James Davis.

² See Act of July 1, 1862, ch. 120, 12 Stats. 489; amended by Act of July 2, 1864, ch. 220, 13 State. 373.

³ Whenever public lands of the United States have been or may be granted to any railroad company for use as a right of way for its railroad or as sites for railroad structures of any kind, and *use and occupancy of said lands for such purposes has ceased* or shall hereafter cease, whether by forfeiture or *by abandonment by said railroad company declared or decreed by a court of competent jurisdiction or by Act of Congress, then and thereupon all right, title, interest, and estate of the United States in said lands shall*, except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment *be transferred to and vested in any person, firm, or corporation, assigns, or successors in title and interest to whom or to which title of the United States may have been or may be granted, conveying or purporting to convey the whole of the legal subdivision or subdivisions traversed or occupied by such railroad or railroad structures of any kind as aforesaid*, except lands within a municipality the title to which, upon forfeiture or abandonment, as herein provided, shall vest in such municipality, and this by virtue of the patent thereto and without the necessity of any other or further conveyance or assurance of any kind or nature whatsoever. 42 U.S.C §912 (1964) (in part) (emphasis added).

Discussion

Plaintiff contends that the district court misapplied §912. However, courts have provided that right-of-ways granted prior to 1871 gave the railroad a limited fee with the right of reverter⁴, which is governed by § 912. In this case, Southern Pacific possessed the limited fee with the right of reverter, since they were Central Pacific's predecessor in interest. Southern Pacific conveyed this fee simple with the right of reverter.

The district court properly applied the findings in *Marlow v. Malone*.⁵ In *Marlow*, upon similar facts, the Appellate Court of Illinois looked at the plain language of §912 and determined that the appellant's argument that the railroad's abandoned right-of-way vested in them simply because they owned the adjacent property lacked merit. Title is imperative to a claim of a reversionary interest in the right-of-way because §912 "passes title of abandoned right-of-ways to persons, entities, or successors in title who have received paper title or can establish title to the land underlying the right-of-way, independent of the operation of section 912." This finding is consistent with the legislative history of §912.⁶

Since Plaintiff was not able to produce paper title and actually admitted not owning the underlying land, Plaintiff is not vested with the reversionary interest. On the other hand, Logan, the Defendant, is the rightful predecessor in interest to the underlying land.

Conclusion

The Nevada Supreme Court held that when a railroad company abandons a right-of-way, the reversionary interest in the right-of-way vest in the underlying landowner. Defendant, in this case, is the underlying landowner, therefore vested with the reversionary interest in the right-of-way.

⁴ Railroad grants made after 1871 were exclusive-use easements because Congress stopped conveying land outright.

⁵ 734 N.E.2d 195 (Ill. App. Ct. 2000).

⁶ *See*, 59 Cong. Rec. 6474 (1920).