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Property--Marketability of Land--Effect of a Judgment Void on Its Face

S. Roy Woodall Jr.
University of Kentucky

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Recent Cases

PROPERTY—MARKETABILITY OF LAND—EFFECT OF A JUDGMENT VOID ON ITS FACE—Settlor transferred land in trust in 1919, providing that the income from the land would go to his daughter for her life, remainder to the heirs of her body. Due to economic conditions and floods, the land failed to produce a self-sustaining income. In 1930, the life beneficiary (who would hold the reversion by intestacy) obtained a judgment which terminated the trust on grounds of impossibility of performance and which vested fee simple title to the land in the life beneficiary. The only child of the life beneficiary, a son, was made a party to the suit. The life beneficiary then sold the land to the defendants. In 1959, in an action to remove cloud on title, the children of the life beneficiary (the son who had been a party in the 1930 action and a daughter who was born thereafter) prayed for the cancellation of the 1930 judgment which destroyed their contingent remainders. They claimed that since the court had no power to destroy the contingent remainders, the judgment was void on its face. The defendants claimed that the plaintiffs were barred by laches, and that even if the 1930 judgment were void on its face, no action in equity would lie to vacate it.¹ The trial court set aside and canceled the 1930 judgment. *Held*: Affirmed. The 1930 judgment was null and void, and plaintiffs held a remainder interest in the land. *Hughes v. Neely*, 332 S.W. 2d 1 (Mo. 1960).

The court based its decision on two propositions. First, the lower court in 1930 had no *power* to terminate a trust upon grounds of impossibility of performance when the trust res was not producing

¹ The general rule that no action in equity will lie to vacate a judgment void on its face would ordinarily prevent a petitioner from bringing this action to remove cloud on title, for a void judgment does not create a cloud on title since it binds no one. See Annot., 78 A.L.R. 24, 73 (1932). However, the Missouri court has adopted a unique doctrine, the Legal Acumen Doctrine, which provides that a void judgment does create a cloud on title, thus giving equity jurisdiction, if the invalidity is such that legal acumen is required to discover it. *Merchants' Bank v. Evans*, 51 Mo. 335 (1873). The court, in declaring that the plaintiffs had a right to bring this action, relied upon both the Legal Acumen Doctrine and Mo. Rev. Stat. §527.150(1) (1949). This statute provides:

Any person claiming any title, estate or interest in real property . . . may institute an action against any person or persons having or claiming to have any title, estate or interest in such property . . . to ascertain and determine the estate . . . of said parties . . . in such real estate, and to define and adjudge by its judgment or decree the title, estate and interest of the parties severally in and to such real property.

This appears merely to be a declaratory judgment statute, but the court did not interpret it as such.

any net income and when there were contingent remaindermen as beneficiaries. The proper course would have been for the lower court to order sale of the res and reinvestment of the proceeds by the trustee.² Second, the lower court in 1930 had no *power* to destroy contingent remainders in land by terminating a trust and vesting legal title in the life tenant and reversioner (both interests being in same person).³ As statements of how substantive law should properly be applied, there is nothing wrong with these propositions. They are eminently sound. But to upset a thirty year old judgment where the court had jurisdiction of the parties and the subject matter on the ground that substantive law was erroneously applied is another matter. Yet this in effect is precisely what the court did.

The crux of the matter is what the court meant by its holding that the lower court had no *power* to do what it did. The court did not explain what it meant by "power," a word that eludes specific definition.⁴ However, from the opinion it appears that the court, by holding that the lower court lacked the power to terminate the trust and destroy the contingent remainders, used the term in its negative sense to describe the lower court's erroneous application of a substantive rule of law. The court held that the lower court's error rendered the 1930 judgment void on its face. The *Restatement of*

² In support of this proposition, the court cited *Restatement (Second), Trusts* §336, comment *b* (1959).

³ In support of this proposition, the court cited Professor Eckhardt's conclusion in "Destructibility of Contingent Remainders in Missouri," 6 *Mo. L. Rev.* 268, 295 (1941), that contingent remainders are indestructible in Missouri. Professor Eckhardt recently modified this conclusion in "Property Law in Missouri," 25 *Mo. L. Rev.* 390, 392 (1960), by stating that until the present case was decided there was no binding precedent in Missouri to the effect that a trust could not be terminated if such termination destroyed a contingent remainder. To the contrary, however, there was dictum in *Green v. Sutton*, 50 *Mo.* 186, 193 (1872), that a contingent remainder which has not vested on the termination of the particular or supporting estate will be destroyed.

The court also cited *Gibson v. Gibson*, 280 *Mo.* 519, 219 *S.W.* 561 (1920), in support of its proposition that the lower court had no power to destroy the contingent remainders, but that case fails as precedent since no contingent remainders were involved.

Thus, the authorities used by the court for holding the 1930 judgment void on its face were either not in point, or were written after the 1930 judgment was issued. The grounds of the invalidation of the thirty year old judgment, therefore, seem to be a bit shaky, even though based on "good" modern law.

⁴ Three attempts at defining power are as follows:

(1) "A power, as the word is used in this Restatement, is an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given act." *Restatement, Property* §3 (1936).

(2) "The nearest synonym to power is legal ability." Hohfeld, "Some Fundamental Legal Conceptions As Applied In Judicial Reasoning," 23 *Yale L.J.* 16, 45 (1913).

(3) Judicial power is "the power which administers justice to the people according to the prescribed forms of law—according to their rights as fixed by the law." *State v. Fry*, 4 *Mo.* 120, 191 (1835).

*Judgments*⁵ states that when a judgment is merely erroneous it is generally not void, but only voidable. This distinction is important, for a void judgment is subject to both direct attack and collateral attack, while a voidable judgment is subject to direct attack only.⁶

A judgment is void, according to the *Restatement of Judgments*, when any of the following requisites are not satisfied: first, the court must have jurisdiction over the parties and the subject matter; second, a reasonable method of notification must be employed; third, the judgment must be rendered by a court with competency to render it; and fourth, there must be a compliance with such requirements as is necessary for the valid exercise of power by the court.⁷ These requisites of a valid judgment were apparently satisfied in the 1930 action. The first requisite was met, for the lower court had jurisdiction over the subject matter and the interested parties (one of whom was the heir presumptive of the life beneficiary and the other bound by the doctrine of virtual representation)⁸ who thirty years later, in the principal case, asked for cancellation of the 1930 judgment. The second requisite was met for there was nothing in the record to indicate that a reasonable method of notification had not been employed. As to the third requisite, it seems to be question-begging, for it appears to be the same as the jurisdictional requirement, especially in this case in view of the court's statement that the lower court had the right to terminate a trust where the "purposes for which the trust is created become impossible of accomplishment."⁹ The fourth requisite was met, for the lower court satisfied the requirements necessary for the valid exercise of power on the *Restatement's* terms; it had jurisdiction, the judgment was within the pleadings, and there was no defect in the process.

The Missouri court has stated the test for determining the validity of a judgment in more simple terms. In *LaPresto v. La Presto*,¹⁰ the court said that a judgment rendered by a court having jurisdiction of the parties and subject matter is valid and is not open to any collateral proceeding. However, the court went on to say that a judgment which meets the jurisdictional requirement *may* be void if the record on its face discloses that the court exceeded its jurisdiction and rendered a particular judgment which it was wholly unauthorized

⁵ §4, comment *a* (1942).

⁶ *Ibid.*

⁷ *Id.*, §§5-8.

⁸ *Sikemeier v. Galvin*, 124 Mo. 367, 27 S.W. 551 (1894); *Simes, Future Interests* §1803 (2d ed. 1956); *Restatement, Property* §184 (a), comment *b* (1936).

⁹ *Hughes v. Neely*, 332 S.W. 2d 1, 8 (Mo. 1960).

¹⁰ 285 S.W. 2d 568 (Mo. 1958).

to render under the circumstances.¹¹ In support of this proposition the court cited three Missouri cases, all of which involved judgments which were either contrary to statutory provisions or based on issues not made by the pleadings.¹² In 1930, destructibility of contingent remainders had not been abolished by statute or decision in Missouri,¹³ and the judgment terminating the trust was within the pleadings. Such being the case, it appears that the appellate court's declaration of the 1930 judgment as void on its face was not based upon the usual grounds of lack of jurisdiction, but rather upon the ground that in the lower court there was an erroneous application of what the court in 1959 felt was the controlling substantive rule of law. To hold the thirty year old judgment void on its face rather than voidable and therefore subject it to collateral attack was unsound.¹⁴

By holding the 1930 judgment void on its face, the court in effect held that if a court without "power" terminates a trust, the person harmed, even though a party to the lawsuit, can, thirty years later, follow the res of the trust into the hands of a subsequent bona fide purchaser. The most obvious consequence which emerges from such a decision is that when a title to land contains a court judgment somewhere in the chain of title, the land may be unmarketable. Before a reasonably prudent man will be willing to accept the title, every lower court judgment will have to be appealed to determine whether the lower court properly applied the substantive law, and even then there is no certainty that the appellate court will not find that it itself had no "power" to do what it did. Such a procedure would further bog down our already cumbersome land transfer system and weaken the conclusiveness of the judicial process itself, for it would permit persons, who had been parties to a prior action which vested title to land in another person, to assert claims against the land at a later time. According to the *Restatement of*

¹¹ *Id.* at 570.

¹² In *Gray v. Clement*, 296 Mo. 497, 246 S.W. 940 (1922), the judgment was void on its face because it was not in compliance with the statute providing for proceedings in partition. In *Ecton v. Tomlinson*, 278 Mo. 282, 212 S.W. 865 (1919), the judgment awarding alimony was void on its face because it was contrary to a statute providing that specific personal property could not be awarded as alimony and cut off dower. In *Burns v. Ames Realty Co.*, 31 S.W. 2d 274 (Mo. App. 1930), the judgment was void on its face because it was based on issues not raised by the pleadings.

¹³ See note 3, *supra*.

¹⁴ See *Brooks v. Baker*, 187 S.W. 2d 169 (Ark. 1945) and *McAllister v. Superior Court in and for Alameda County*, 28 Cal. App. 2d 160, 82 P. 2d 462 (1938), which held that where no question of jurisdiction is raised, a judgment or decree cannot be collaterally impeached because it is inconsistent with the finding or conclusions of law or because it appears from the record or the opinion of the court that there was a mistake, and that the judgment should have been different from that actually rendered.

Judgments, where remainders are created in unborn children or where property is limited to the heirs of a living person, an action which would permit the unknown future owners later to re-open a contest as to the rights in the subject matter would be against a public policy which seeks certainty of title and marketability of property.¹⁵ In face of this case, one would wonder what reliance Missouri lawyers might put in the Missouri Bar's *Title Standard 10*:

Where a judgment or decree affecting the title to real estate has been entered of record for more than 31 years and appears in the abstract, but the remainder of the action either is not shown, or is incompletely shown, and where such judgment or decree gives full information as to the status of parties and the nature of the action, which is sufficient upon which to base an opinion as to the validity of the proceedings in question, the proceedings shall be presumed to be valid and binding as to all matters recited in the judgment or decree, and such showing shall be accepted as sufficient, unless something affirmatively appears therein, showing lack of jurisdiction of either the parties or the subject.

S. Roy Woodall, Jr.

CONSTITUTIONAL LAW—FREEDOM OF THE PRESS—MUNICIPAL ORDINANCE RESTRICTING DISTRIBUTION OF HANDBILLS—Petitioner distributed handbills in Los Angeles urging a boycott against specified merchants who carried products of manufacturers alleged to be discriminatory toward racial minorities in their employment practices. The handbills carried only the name of "National Consumers Mobilization." Petitioner was prosecuted under a city ordinance prohibiting distribution, in any place and under any circumstances, of handbills which did not have printed on them the true names and addresses of the author, distributor and sponsor.¹ Petitioner was convicted, fined \$10 and exhausted his remedies by appeal to the Appellate Department of the Superior Court for the County of Los Angeles which affirmed the conviction.² That court rejected petitioner's seasonable contention

¹⁵ §87, comment *a* (1942).

¹ City of Los Angeles, Calif., Municipal Code §28.06 provides: No person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover, or the face thereof, the name and address of the following:

(a) The person who printed, wrote, compiled or manufactured the same.

(b) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon.

² *People v. Talley*, 172 Cal. App. 797; 332 P. 2d 447 (1958).