

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Robert Timothy,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060960-CA
v.)	
)	F I L E D
Parley H.J. Timothy,)	(June 14, 2007)
)	
Defendant and Appellee.)	2007 UT App 204

Third District, Salt Lake Department, 050918496
The Honorable Randall N. Skanchy

Attorneys: Robert Timothy, Waikoloa Village, Hawaii, Appellant
 Pro Se
 Gregory J. Sanders and Gary T. Wight, Salt Lake City,
 for Appellee

Before Judges Bench, Billings, and Davis.

BILLINGS, Judge:

Plaintiff Robert Timothy (Son) appeals the trial court's grant of summary judgment to Defendant Parley H.J. Timothy (Father). Son argues that the trial court erroneously interpreted Utah Code section 57-6-4 as excluding him from having color of title to a property parcel located in Salt Lake City, Utah. See Utah Code Ann. § 57-6-4 (Supp. 2006). We review the district court's grant of summary judgment and its interpretation of section 57-6-4 for correctness. See Wasatch Crest Ins. Co. v. LWP Claims Adm'rs Corp., 2007 UT 32, ¶6, 575 Utah Adv. Rep. 10 (reviewing trial court's grant of summary judgment for correctness); MacFarlane v. Utah State Tax Comm'n, 2006 UT 25, ¶9, 134 P.3d 1116 ("A matter 'of statutory interpretation [is] a question of law . . . review[ed] . . . for correctness.'" (first alteration in original) (quoting State v. Schofield, 2002 UT 132, ¶6, 63 P.3d 557))).

In interpreting a statute, "[w]e look first to the plain language of [the] statute to determine its meaning." J. Pochynok Co. v. Smedsrud, 2005 UT 39, ¶15, 116 P.3d 353. "When examining the plain language [of the statute], we must assume that each

term included in the [statute] was used advisedly." Carrier v. Salt Lake County, 2004 UT 98, ¶30, 104 P.3d 1208.

Section 57-6-4 provides that

[a]ny person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, for the term of five years, or who has occupied it for less time, if he, or those under whom he claims, have at any time during the occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements on the real estate, or if he or those under whom he claims have at any time during the occupancy paid the ordinary county taxes on the real estate for any one year, and two years have elapsed without a repayment by the owner, and the occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained.

Utah Code Ann. § 57-6-4(2)(a) (emphasis added). Here, the trial court determined that Son did not have color of title under the statute because the undisputed facts show he did not live on the property by himself as required under section 57-6-4(2)(a). See id. We agree.¹

The plain language of section 57-6-4(2)(a) states that to demonstrate color of title, the claiming party must show that he or she occupied the property "by himself, or by those under whom he claims." Id. (emphasis added). The language and construction of the statute indicate that this requirement applies regardless of whether the claiming party asserts color of title based on the passage of time, valuable improvements, or the payment of taxes. See id.; see also Jeffs v. Stubbs, 970 P.2d 1234, 1241 (Utah 1998) (delineating by brackets the three means of obtaining color

¹Because we hold that Son did not have color of title, Son cannot recover for any alleged improvements to the property. See Hidden Meadows Dev. Co. v. Mills, 590 P.2d 1244, 1249 (Utah 1979) ("An occupying claimant is required . . . to establish two elements before he can recover for improvements placed on real property by him: (1) that he has color of title[] and (2) that he placed the improvements in good faith. If he fails to establish either one, he cannot recover.").

of title and indicating that occupation "by himself, or by those under whom he claims" applies to all three means).

Here, Son admits in his deposition testimony that he did not occupy the property by himself during the relevant time periods. Specifically, Son explains that from 1987 to 1991, Son lived on the property with his brother and with an additional individual and that individual's family; and that from 1996 to 2004, Son lived on the property with his brother.

Son states that his brother constitutes a person "under whom [Son] claims." Utah Code Ann. § 57-6-4(2)(a). Son provides no support for this assertion but simply asks this court to interpret "those under whom he claims," *id.*, "to mean the inclusion of other people with like interest in the property," such as "a spouse, family member[], lien holder[], partner[], or life partner[], who [has] contributed to the property in the required time frame." Although neither the statute nor Utah case law expressly define "those under whom he claims," *id.*, we decline to adopt Son's interpretation, which effectively neglects the plain language of the statute and defines "under whom he claims," *id.*, so broadly as to make the requirement illusory. See State v. Ireland, 2006 UT 82, ¶19 n.35, 150 P.3d 532 (citing Gardner v. Chrysler Corp., 89 F.3d 729, 736 (10th Cir. 1996), for "refusing to adopt an interpretation that would essentially eliminate a provision from the statute" (quotations and alteration omitted)).

Accordingly, we affirm.

Judith M. Billings, Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

