

IN THE UTAH COURT OF APPEALS

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Weststar Exploration Company,)	MEMORANDUM DECISION
Inc., a Nevada corporation,)	(Not For Official Publication)
)	
Plaintiff and Appellant,)	Case No. 20070413-CA
)	
v.)	F I L E D
)	(May 15, 2008)
Cochrane Resources, Inc., a)	
Utah corporation; P & M)	2008 UT App 169
Petroleum Management, LLC, a)	
Colorado limited liability)	
company; Newfield Rocky)	
Mountains, Inc., fka Inland)	
Resources, Inc., a Delaware)	
corporation; QEP Uinta Basin,)	
Inc., a Delaware corporation;)	
and John Does 1-5 and Mary)	
Roes 1-5, whose true names are)	
unknown,)	
)	
Defendants and Appellees.)	

Eighth District, Vernal Department, 050800069
The Honorable John R. Anderson

Attorneys: Wade R. Budge, Troy L. Booher, and Katherine Carreau,
Salt Lake City, for Appellant
Clark B. Allred and Clark A. McClellan, Vernal, for
Appellees Cochrane Resources and P&M Petroleum
Management
Gayle F. McKeachnie, Vernal, for Appellees Newfield
Rocky Mountains and QEP Uinta Basin

Before Judges Bench, Billings, and McHugh.

BILLINGS, Judge:

Plaintiff Weststar Exploration Company, Inc. (Weststar) appeals the trial court's entry of summary judgment in favor of Defendants Newfield Rocky Mountains, Inc.; Cochrane Resources, Inc.; P & M Petroleum Management, LLC; and QEP Uinta Basin, Inc. (collectively Defendants) and the resulting dismissal of its claims. We reverse and remand.

Weststar owns a natural gas pipeline on a Bureau of Land Management (BLM) easement in Uintah County, Utah. Sometime in the early 1990s, Bonanza Gas Company (Bonanza) obtained the easement for the pipeline from BLM and owned, constructed, and operated the pipeline. Weststar asserts that the ownership interest in the pipeline passed through an unrecorded assignment from Bonanza to William C. Gilmore¹ and then in a second unrecorded assignment from Gilmore to Weststar.

Sometime in 2001, Defendants reconstructed the pipeline and began using it to transport natural gas to Defendants' wells. Weststar was unaware of Defendants' reconstruction and use of the pipeline. However, upon discovering Defendants' unauthorized use of the pipeline, Weststar brought this legal action claiming trespass and unjust enrichment. Defendants filed motions for summary judgment claiming that Weststar cannot prove an ownership interest in the pipeline sufficient to sustain its claims of trespass and unjust enrichment against Defendants. The trial court granted Defendants' motion for summary judgment on this basis.

On appeal, Weststar claims that, at the very least, there is a material issue of fact concerning whether Weststar actually had an ownership interest in the pipeline. We agree. In their motions for summary judgment, Defendants asserted that Weststar had not established an ownership interest in the pipeline and therefore could not sustain its lawsuit in trespass and unjust enrichment against Defendants. In its opposition to Defendants' motions for summary judgment, Weststar filed Gilmore's affidavit, which stated:

Weststar is the current owner of the [p]ipeline, having received title to the [p]ipeline by unrecorded assignment from myself, William C. Gilmore. I received title to the [p]ipeline from Bonanza . . . also by unrecorded assignment. Bonanza was an entity which I formed. I was the officer and sole partner of Bonanza at the time Bonanza assigned the [p]ipeline to me. I was the sole owner of the [p]ipeline at the time I assigned the [p]ipeline to Weststar.

Attached to the affidavit was a copy of the unrecorded assignment from Gilmore to Weststar, but not a copy of the unrecorded

1. Gilmore was the officer and sole partner of Bonanza at the time of the assignment.

assignment from Bonanza to Gilmore.² The trial court determined that Weststar did not establish its ownership interest in the pipeline because it could not prove that Bonanza actually assigned the pipeline to Gilmore before Gilmore assigned the pipeline to Weststar.

Under Utah law, "[a] single sworn statement is sufficient to create an issue of fact [in ruling on a motion for summary judgment]. . . . [I]t is not for the court to weigh the evidence or assess credibility." Webster v. Sill, 675 P.2d 1170, 1172 (1983). This includes sworn statements made in an affidavit because "a trial court may consider, together with the affidavits filed, 'the pleadings, depositions, answers to interrogatories, and admissions on file.'" Id. (quoting Utah R. Civ. P. 56(c)). However, the affidavit by a party opposing summary judgment "must be made on personal knowledge of the affiant, and set forth facts that would be admissible in evidence and show that the affiant is competent to testify to the matters stated therein." Walker v. Rocky Mountain Recreation Corp., 29 Utah 2d 274, 508 P.2d 538, 542 (Utah 1973). Any statements in the affidavit "made merely on information and belief will be disregarded." Id.

We conclude that Gilmore's affidavit testimony regarding his ownership interest in the pipeline creates an issue of material fact sufficient to withstand summary judgment. Gilmore's testimony is based upon his personal knowledge of how title of the pipeline was transferred from Bonanza to himself. In fact, Gilmore is the only person who would have personal knowledge because he was the only actual party to the transaction. Defendants failed to put forth any evidence to the contrary. Gilmore's testimony is not based on information and belief. It is not speculative and does not simply state his opinion. It is a factual statement about an event of which he has personal knowledge.

Defendants argue that under rule 1002 of the Utah Rules of Evidence, Weststar was required to provide the actual unrecorded document Bonanza used to assign the pipeline to Gilmore. See Utah R. Evid. 1002. However, rule 1002 does not apply here.

2. We note that Weststar included a number of additional documents in its motion to reconsider concerning its ownership interest in the pipeline. However, we do not consider these documents and only look at the evidence that was before the court on summary judgment. See Utah R. Civ. P. 59(a)(4) (limiting newly discovered evidence in a motion for a new trial to evidence that "could not, with reasonable diligence, have [been] discovered and produced at trial"); Barnard v. Sutliff, 846 P.2d 1229, 1235 (Utah 1992).

Where the existence of a document, such as a license, instead of its content is at issue, "[t]he best evidence rule, by its terms, has no applicability." Billings v. Nielson, 738 P.2d 1047, 1049 (Utah Ct. App. 1987) ("Rule 1002 exists because presenting to the court the exact words of some writings is of more than average importance, particularly in dispositive or operative documents. A slight difference in words may result in a great difference in rights."). Here, it is not the precise language of the assignment that is crucial but the fact that the assignment occurred, and Gilmore's testimony goes to this fact--that the assignment actually took place.

Defendants further argue that Gilmore's affidavit is insufficient because the statute of frauds requires Weststar to produce the written assignment from Bonanza to Gilmore. We disagree. The statute of frauds requires the assignment of real property to be in writing. See Utah Code Ann. § 25-5-1 (2007). It does not hold that a transaction never occurred if the written document by which the transfer occurred cannot later be located. Gilmore testified that the assignment occurred via an unrecorded written assignment. Gilmore does not purport to transfer title by his testimony, but rather to testify about the written assignment of title. Thus, Gilmore's testimony about the transfer of title from Bonanza to Gilmore does not violate the statute of frauds. Accordingly, we conclude that Gilmore's affidavit establishes a disputed issue of material fact regarding whether Weststar had an ownership interest in the pipeline sufficient to sustain its claims against Defendants, and summary judgment is therefore inappropriate. See Utah R. Civ. P. 56(c) (stating that summary judgment is appropriate only when "there is no genuine issue as to any material fact").

As an alternative ground to affirm, Defendants argue that Weststar's claims should still be dismissed until Weststar adds all parties that claim an ownership interest in the pipeline. In ruling that Weststar did not prove an ownership interest in the pipeline, the trial court stated:

[E]ven if [Weststar] were able to prove . . . ownership of the pipeline, [the] evidence submitted . . . show[s] that [Weststar], at best, has only partial ownership of the pipeline. Supposing [Weststar] were able to prove even partial ownership, the other putative co-owners should have been joined in this suit pursuant to [r]ule 19 of the Utah Rules of Civil Procedure. Failure to join these parties could also be grounds for dismissal, albeit without prejudice. However, because [Weststar] has not proven

any ownership of the pipeline at all, this [c]ourt does not have to explore that avenue.

In this ruling, the trial court acknowledged that if it were to dismiss Weststar's claims after failing to join indispensable parties, it would have to dismiss without prejudice. Instead, the trial court dismissed Weststar's claims on the merits and with prejudice. Thus we cannot affirm the trial court's grant of summary judgment on this basis.

Moreover, "under rule 19 [of the Utah Rules of Civil Procedure], the trial court must first determine whether a party is necessary" and then, "[i]f the party is necessary, the court must consider whether joinder of the necessary party is feasible." Grand County v. Rogers, 2002 UT 25, ¶ 29, 44 P.3d 734 (citing Utah R. Civ. P. 19(a)). Only if the party is necessary and joinder is feasible must the party be joined. See id. It is only after the court determines that joinder is not feasible that the court "address[es] the indispensability of the party under rule 19(b) and decide[s] whether the action should proceed or be dismissed." Id. It is clear from the trial court's ruling that it did not "explore [the] avenue" of whether the co-owners of the pipeline are both necessary and feasible. Thus, we remand to the trial court to determine the factual question of whether the co-owners are indispensable parties.

Accordingly, we reverse the trial court's grant of summary judgment and remand for proceedings consistent with this decision.

Judith M. Billings, Judge

WE CONCUR:

Russell W. Bench, Judge

Carolyn B. McHugh, Judge