

1 No. 5169

APR 31 1978

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6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
7 NEVADA, IN AND FOR THE COUNTY OF LINCOLN

8 \* \* \* \* \*

9 W. DAVID WESTON, )  
10 Plaintiff, )  
11 -vs- )  
12 COUNTY OF LINCOLN and )  
13 RUBY LISTER, LINCOLN )  
14 COUNTY TREASURER, )  
15 Defendant. )

DECISION

SEVENTH JUDICIAL COURT  
MERLYN M. HOYT  
DISTRICT JUDGE  
WHITE PINE, LINCOLN AND ESNERA COUNTIES  
STATE OF NEVADA



16 A detailed explanation of the procedure which brought  
17 this case to this point is necessary. Prior to April 26, 1978,  
18 Plaintiff, W. DAVID WESTON, was owner of the principal interest in  
19 ten (10) patented mining claims located in Lincoln County, Nevada.  
20 On that date a tax deed was issued to the Lincoln County Treasurer,  
21 RUBY LISTER.

22 On the first Monday of July, 1975, Lincoln County  
23 property taxes had become due and payable. Notice was sent by  
24 mail to MERLYN BINGHAM, as title holder of record, at 216 Paxton  
25 Avenue, Salt Lake City, Utah. The taxes were not paid and became  
26 delinquent on the first Monday of March, 1976. MERLYN BINGHAM was  
27 mailed notice of the delinquency. In accordance with N.R.S. 361.  
28 480, the delinquency was advertised on the 17th day of March, 1976,  
29 in the Lincoln County Record. In accordance with N.R.S. 361.565,  
30 a Tax Certificate of Lien was filed in the Office of the Lincoln  
31 County Recorder, on April 26, 1976, giving notice that there was a  
32 tax lien on the mining property; and that if the lien was not

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1 satisfied within two years, a tax deed would be issued to Lincoln  
2 County. On February 7, 1978, as required by N.R.S. 361.565 (6) (b)  
3 a certified copy of the notice was sent to GNOLAUM UNITRUST and  
4 MARIE BINGHAM, 216 Paxton Avenue, Salt Lake City, Utah, and DAVID  
5 WESTON, and MERLYN G. BINGHAM at 216 Paxton Avenue, Salt Lake City,  
6 Utah, notifying the proper parties that if the full amount of taxes  
7 were not paid in full by April 26, 1978, a tax deed would issue to  
8 the County. The taxes were not tendered or received by that date  
9 and a tax deed was issued.

10 On April 28, 1978, two days later, RUBY LISTER, as  
11 Lincoln County Treasurer, received a check from MERLYN BINGHAM for  
12 all taxes, penalties and interest. The check was returned. The  
13 check had been tendered before Lincoln County gave notice of intent  
14 to sell the property at public auction.

15 The property was later noticed to be sold at a public  
16 auction to be held on June 8, 1979. Plaintiff filed a Complaint  
17 on April 30, 1979; an Answer was filed on May 1, 1979. The auction  
18 was held and the property was sold to the highest bidder; however,  
19 title was not recorded because the County was waiting until the  
20 check for purchase was processed.

21 Two factors are of utmost importance:

- 22 1. Plaintiff filed a Notice of Lis Pendens with
- 23 his Complaint on April 30, 1979;
- 24 2. At the auction on June 8, 1979, Plaintiff gave
- 25 all bidders verbal notice of his claim.

26 Plaintiff filed an Order to Show Cause and Temporary  
27 Restraining Order Without Notice on June 14, 1979. It restrained  
28 and enjoined Defendants from conveying or recording title to the  
29 purchaser or from depositing the sums paid into County funds. It  
30 also commanded Defendants to show cause on June 27, 1979, why they  
31 should not be so restrained and enjoined throughout the pendency  
32 of this action. For good cause shown, time was extended until

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1 July 10, 1979.

2 On June 22, 1979, Plaintiff caused to be served on  
3 Defendants a Motion For Preliminary Injunction; on June 25, 1979,  
4 Defendants filed an Opposition to Motion For Preliminary Injunction  
5 and Motion for Summary Judgment. Hearing was held on July 10, 1979.

6 This Court in a Decision dated December 11th and  
7 filed December 12, 1979, denied the Preliminary Injunction requested  
8 by Plaintiff and granted the Summary Judgment requested by Defendant

9 Plaintiff appealed that Decision on January 7, 1980,  
10 and filed a Motion For a Stay of Judgment of the District Court  
11 Pending Appeal on January 14, 1980. On January 11, 1980, Defendant  
12 filed an Opposition to Motion for a Stay of Judgment of the District  
13 Court Pending Appeal. Included with the Motion was an Affidavit of  
14 RUBY LISTER, the Lincoln County Treasurer. That Affidavit stated  
15 that a Stay of Judgment would be unenforceable, because the Deeds  
16 to the purchaser at public auction had been recorded, apparently,  
17 the day this Court's Decision was filed.

18 The Nevada State Supreme Court in WESTON v. COUNTY  
19 OF LINCOLN, 98 Nev. 183, 643 P.2d 1227 (April 30, 1982) reversed  
20 this Court's Decision and remanded the case back to us. The issue  
21 of law it ruled on was whether N.R.S. 361.583 (3), which gives a  
22 right of reconveyance to someone situated, as was Plaintiff, for  
23 either ninety (90) days, as specified in N.R.S. 361.603, or com-  
24 mencement of posting or publication of public notice, as specified  
25 in N.R.S. 361.595, applied to patented mining claims. This Court  
26 relying on the decision of the State Attorney General, A.G.O. No.  
27 17 (March 25, 1973), had held that N.R.S. 361.585 (3) did not apply  
28 to patented mining claims.

29 The Nevada Supreme Court, in reversing that Decision,  
30 did so in a manner that will help with the current controversy  
31 before this Court. The Supreme Court first noted that Plaintiff  
32 had tendered full payment two days after issuance of the tax deed

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1 and before notice of intent to sell at public auction; thus, within  
2 the purview of N.R.S. 361.585 (3).

3 Then the Court rejected this Court's reliance on the  
4 Attorney General's decision in the following language:

5 *"We disagree with respondents' contention and the*  
6 *conclusion of attorney general opinion number seventeen, relied*  
7 *upon by the district court, that NRS 361.585 (3) is not applicable*  
8 *to patented mining claims because of conflict with NRS 517.410 and*  
9 *NRS 517.420. NRS 517.410 authorizes a county that has acquired*  
10 *title to a patented mining claim through operation of the revenue*  
11 *laws to grant an applicant the right to enter and explore the*  
12 *property. Additionally, applicant is authorized by NRS 517.420 to*  
13 *pay the delinquent taxes, penalties, costs and interest and thereby*  
14 *acquire title."*

15 Defendants filed a Motion suggesting that an award  
16 of money damages, based on what had been received by the County,  
17 was the appropriate remedy to Plaintiff. Plaintiff responded asking  
18 for Summary Judgment against Defendants. A hearing was held on  
19 September 2, 1982, where argument was allowed, and some evidence  
20 as to value was offered.

21 An Order Granting Summary Judgment in Part, Denying  
22 It In Part was filed on June 17, 1983. That Order stated:

23 *"IT IS HEREBY ORDERED that Defendants reconvey the*  
24 *subject property Plaintiff within ninety (90) days of the date of*  
25 *this Order, or in the alternative show cause why they cannot."*

26 A comment needs to be made as to the delay involved  
27 from the September 12, 1982, hearing until now. As can be seen in  
28 the Trial Transcript of the September 12th hearing on Page 17  
29 through 21, this Court has always been of the opinion that Plaintiff  
30 should have his property returned to him. Defendants have seemed  
31 to contend that what must be done is for the Court through its power  
32 to regain the property, as shown by a statement by MR. MCGIMSEY

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1 in the September 12th hearing transcript on Page 19, Lines 24  
2 through 27:

3 *"But my question is: Are they parties to this*  
4 *proceeding or does the County have to go out and reacquire the*  
5 *property with adverse possession --"*

6 Defendants were aware of the possibility that it  
7 could regain title and reconvey that title to Plaintiff.

8 We note that the counsel for Defendants, the District  
9 Attorney, had a change by election as to who held that office. This  
10 in part explains why no direct action was taken by that office.

11 However, we also note that immediately after swear-  
12 ing in the current District Attorney, we specifically advised her  
13 of this pending problem and suggested that she should look into  
14 whether or not the Defendants had the power to regain title to the  
15 property. We waited for action to be taken.

16 Finally, seeing no action coming, the Order filed on  
17 June 17, 1983, specifically ordered Defendants to reconvey or show  
18 cause why they could not within ninety (90) days of the date of  
19 the Order, June 13, 1983.

20 On September 26, 1983, Defendants filed a Motion for  
21 Extension of Time to Show Cause Why Property Cannot Be Reconveyed,  
22 dated September 13, 1983, stating the following reasons:

23 *"1. The district attorney was not aware of the*  
24 *case until some time after taking office and so was not able to*  
25 *begin to work on it earlier.*

26 *"2. The district attorney has been under extensive*  
27 *pressure the last two or three weeks due to heavy criminal case*  
28 *load.*

29 *"3. The case is complicated and requires a great*  
30 *deal of time to prepare."*

31 We, in a last attempt to allow Defendants time to  
32 do something, gave Defendants until November 13, 1983. Defendants

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1 responded on November 14, 1983, in an Answer Showing Cause Why  
2 Property Cannot Be Reconveyed. That response addressed the issue  
3 of whether this Court should have ordered the reconveyance, but did  
4 not address whether Defendants could fulfill the Court's Order.  
5 It spoke of "improbability", but not "possibility", which was what  
6 the Court ordered them to show.

7 We suggested many times that the District Attorney  
8 take appropriate action; yet no attempt was made to regain title.  
9 Therefore, we ordered a final hearing to be held as to damages.

10 At that hearing the District Attorney suggested to  
11 the Court that, if given more time, she would look into various  
12 ways of recovering the property, such as a Quiet Title action or  
13 joining the current owners into this suit.

14 We note these protracted proceedings not to embarrass  
15 the District Attorney, but to show that should the following  
16 statutory interpretation fail to be correct, MR. WESTON would be  
17 excluded from what the Legislature must have included as procedures  
18 to protect him or one situated in a similar situation.

19 For the reasons given below the Court finds that the  
20 deeds recorded in the purchaser at public auction for the mining  
21 property, which is the subject of this action, and all subsequent  
22 deeds are void as a matter of law.

23 We again note the nexus of the Supreme Court's  
24 Opinion in this case before remand:

25 *"It is our obligation to construe statutory provi-*  
26 *sions in such a manner as to render them compatible whenever*  
27 *possible."*

28 The Court then analyzed N.R.S. 361.585 (3) in light  
29 of N.R.S. 517.410. It concluded that N.R.S. 517.410 allows a  
30 county to act in addition to, rather than in contravention of  
31 N.R.S. 361.585 (3).

32 .....

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1 In this case MR. WESTON received a ruling that he  
2 should have his property returned to him. The county did not do  
3 what they had to do to take it away from him. Yet, they conveyed  
4 what appeared to be a valid title to a purchaser.

5 N.R.S. 361.595 states:

6 "6. All such deeds, whether issued before or after  
7 July 1, 1955, are primary evidence of the regularity of all pro-  
8 ceedings relating to the order of the board of county commissioners,  
9 the notice of sale and the sale of the property."

10 Thus, as a deed was recorded, there is primary evidence that the  
11 notice of sale required by N.R.S. 361.595 (3) was given.

12 The section continues:

13 "...but no such deed may be executed and delivered  
14 by the county treasurer until he files at the expense of the  
15 purchaser, with the clerk of the board of county commissioners,  
16 proper affidavits of posting and publication of the notice of sale,  
17 as the case may be, together with the return of sale duly verified,  
18 showing compliance with the order of the board of county commission-  
19 ers, which return constitutes primary evidence of the facts recited  
20 therein." [Emphasis added].

21 WESTON, supra, said that Plaintiff had a right to  
22 either a ninety (90) day redemption period or a notice of sale as  
23 required under N.R.S. 361.595 (i.e., 20-day notice). That Court  
24 also held that he tendered payment before either. Therefore, the  
25 deed could not be executed or delivered; it is void.

26 It is the Order of this Court that the County  
27 Treasurer deliver and record a deed to the property to Plaintiff;  
28 that the District Attorney cause a copy of this Order to be served  
29 on each and every owner of record of any interest in this property  
30 within thirty (30) days of the filing of this Order; that Plaintiff  
31 may still pursue further proceedings should he feel additional  
32 damages are appropriate.

DATED this 9th day of January, 1985.

*Merlyn H. Hoyt*  
DISTRICT JUDGE

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MERLYN H. HOYT  
DISTRICT JUDGE  
WHITE PINE, LINCOLN AND BURKE COUNTIES  
STATE OF NEVADA



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No. 82166  
FILED AND RECORDED AT REQUEST OF  
County Clerk  
Jan. 31, 1985  
AT 20 MINUTES PAST 3 O'CLOCK  
P.M. IN BOOK 64 OF OFFICIAL  
RECORDS, PAGE 381 LINCOLN  
COUNTY, NEVADA.

*Yvonne A. Saylor*  
COUNTY RECORDER

-8th and last-

BOOK 64 PAGE 388