Fourth Session

How Lawyers Think

The Case of the Purloined Pelt

Pierson
v
Post

Supreme Court of Judicature
August Term, 1805

3 Caines 175
CITE TITLE AS: Pierson v Post

Opinion of the Court

TOMPKINS, J. delivered the opinion of the court.

Procedural History

"This cause comes before us on a return to a *certiorari* directed to one of the justices of *Queens* county."

The majority summarizes the facts

East Side of Pond, South Hampton, Long Island, ca. 1872-1887

Facts and Question to be Decided

"The question submitted by the counsel in this cause for our determination is, whether *Lodowick Post,* by the pursuit with his hounds in the manner alleged in his declaration, acquired such a right to, or property in, the fox, as will sustain an action against (Abraham) *Pierson* for killing and taking him away?

The cause was argued with much ability by the counsel on both sides, and presents for our decision a novel and nice question. It is admitted that a fox is an animal *ferœ naturœ,* and that property in such animals is acquired by occupancy only. These admissions narrow the discussion to the simple question of what acts amount to occupancy, applied to acquiring right to wild animals?"

Precedents Supporting the Court's Decision

"If we have recourse to the ancient writers upon general principles of law, the judgment below is obviously erroneous. *Justinian's Institutes,* lib. 2. tit. 1. s. 13. and *Fleta,* lib. 3. c. 2. p. 175. adopt the principle, that pursuit alone vests no property or right in the huntsman; and that even pursuit, accompanied with wounding, is equally ineffectual for that purpose, unless the animal be actually taken. The same principle is recognised by *Bracton,* lib. 2. c. 1. p. 8.

Puffendorf, lib. 4. c. 6. s. 2. and 10. defines occupancy of beasts *feræ naturæ,* to be the actual corporal possession of them, and *Bynkershoek* is cited as coinciding in this definition. It is indeed with hesitation that *Puffendorf* affirms that a wild beast mortally wounded, or greatly maimed, cannot be fairly intercepted by another, whilst the pursuit of the person inflicting the wound continues. **The foregoing authorities are decisive to show that mere pursuit gave *Post* no legal right to the fox, but that he became the property of *Pierson,* who intercepted and killed him."**

Distinguishing Contrary Precedents

"It therefore only remains to inquire whether there are any contrary principles, or authorities, to be found in other books, which ought to induce a different decision. Most of the cases which have occurred in *England,* relating to property in wild animals, have either been discussed and decided upon the principles of their positive statute regulations, or have arisen between the huntsman and the owner of the land upon which beasts *feræ naturæ* have been apprehended; the former claiming them by title of occupancy, and the latter *ratione soli.* Little satisfactory aid can, therefore, be derived from the *English* reporters…

The case cited from 11 *Mod.* 74—130. I think clearly distinguishable from the present; inasmuch as there the action was for maliciously hindering and disturbing the plaintiff in the exercise and enjoyment of a private franchise; and in the report of the same case, 3 *Salk.* 9. *Holt,* Ch. J. states, that the ducks were in the plaintiff's decoy pond, and *so in his possession,* from which it is obvious the court laid much stress in their opinion upon the plaintiff's possession of the ducks, *ratione soli."*

Public Interest Analysis

"If the first seeing, starting, or pursuing such animals, without having so wounded, circumvented or ensnared them, so as to deprive them of their natural liberty, and subject them to the control of their pursuer, should afford the basis of actions against others for intercepting and killing them, it would prove a fertile source of quarrels and litigation."

Holding of the Court

"We are the more readily inclined to confine possession or occupancy of beasts *feræ naturæ,* within the limits prescribed by the learned authors above cited, for the sake of certainty, and preserving peace and order in society.

However uncourteous or unkind the conduct of *Pierson* towards *Post,* in this instance, may have been, yet his act was productive of no injury or damage for which a legal remedy can be applied. We are of opinion the judgment below was erroneous, and ought to be reversed."

Dissent

LIVINGSTON, J. My opinion differs from that of the court.

Review of Precedents Pro and Con

This is a knotty point…Writers on general law, who have favoured us with their speculations on these points, differ on them all…

Public Interest Analysis

"(The fox's) depredations on farmers and on barn yards, have not been forgotten; and to put him to death wherever found, is allowed to be meritorious, and of public benefit. Hence it follows, that our decision should have in view the greatest possible encouragement to the destruction of an animal, so cunning and ruthless in his career. But… what gentleman (i.e. the plaintiff)… would mount his steed, and for hours… pursue the windings of this wily quadruped, if… a saucy intruder (i.e. the defendant), who had not shared in the honours or labours of the chase, were permitted to come in at the death, and bear away in triumph the object of pursuit?

Dissent's Conclusion

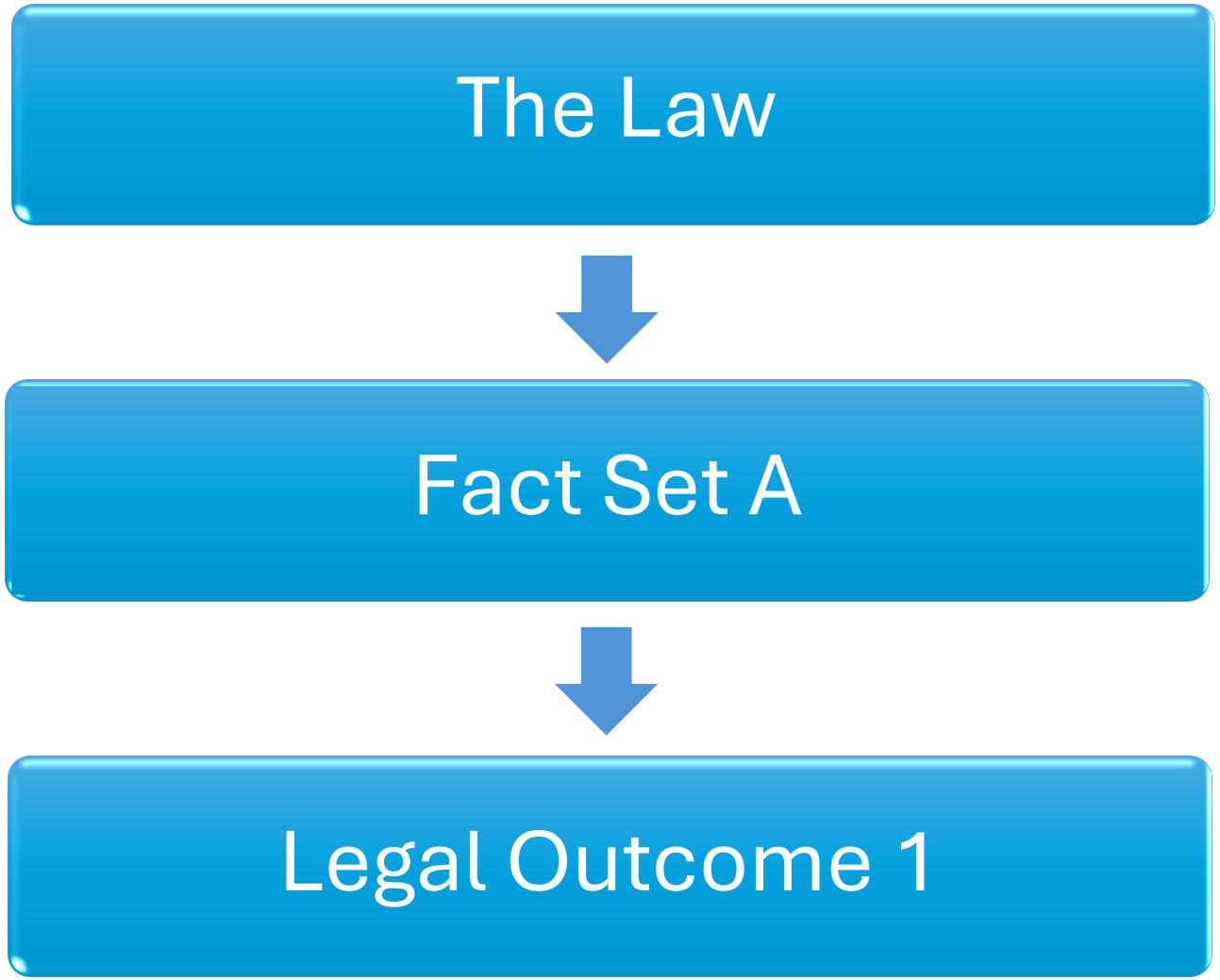
"Now… we are at liberty to adopt one of the provisions just cited, which comports also with the learned conclusion of *Barbeyrac,* that property in animals *ferœ naturœ* may be acquired without bodily touch or manucaption, provided the pursuer be within reach, or have a *reasonable* prospect (which certainly existed here) of taking, what he has *thus* discovered an intention of converting to his own use."

Precedent = Stare Decisis = Predictability

Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Shiel, supra at 108, 101 N.E.3d 290, quoting Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991).

Massachusetts Supreme Judicial Court (2024)

Precedent = Stare Decisis = Predictability



How Lawyers Analyze a Legal Issue

(Assuming no intervening change of underlying law)

Scenario 1

Fact Set B

Is Fact Set B different from Fact Set A?

Fact Set B is identical to Fact Set A.

Legal Outcome 1

How Lawyers Analyze a Legal Issue

(Assuming no intervening change of underlying law)

Scenario 2

Fact Set B

Is Fact Set B different from Fact Set A?

Yes, but are the differences material?

If no, then Legal Outcome 1

How Lawyers Analyze a Legal Issue

(Assuming no intervening change of underlying law)

Scenario 3

Fact Set B

Is Fact Set B different from Fact Set A?

Yes, but are the differences material?

If yes, then Legal Outcome 2

What Changes Underlying Law

- Changing public policy considerations
- Contrary ruling by a higher court
- New state or Federal statute
- Contrary constitutional olding

Basic Form of Every Legal Analysis
(Holdings, Dissents, Briefs, Memos)

Issue

Facts

Conclusion

Analysis of Precedents and Factors Overriding Precedents

Public policy issues supporting your argument

Restate Conclusion

Precedent Analysis

Discuss all prior precedents (i.e. cases with similar facts)

Explain why all favorable cases support your conclusion

Distinguish all cases that do not support your conclusion

Johnson v. Settino – Trial Court

Existing Law: The fiancé gets the wedding ring back, provided the breakup is not his fault. (Massachusetts Supreme Judicial Court, 1959)

Fact Set: After a bench trial, the judge concluded that the fiancé ended the engagement on the mistaken belief that his fiancée was having an affair with another man.

Legal Outcome: Since ending the engagement was the fiancé's fault, he is not entitled to the return of the wedding ring.

Johnson v. Settino on Appeal

We adhere to (precedent) “unless there are developments that justify revisiting the law.” And where, as here, the rule does not involve an interpretation of a statute and instead was of our own making, we have considered whether the prior court's rationale continues to be “consonant with the needs of contemporary society.”

Assessing blame when one party concludes that a proposed marriage would fail is at odds with a principal purpose of an engagement period to test the permanency of the couple's wish to marry. Additionally, as is evident from the Legislature's adoption of no-fault divorce, adhering to the rule is out of step with modern relationships. Accordingly, we adopt the no-fault approach to determining ownership of an engagement ring after the engagement is terminated.

Massachusetts Supreme Judicial Court (2024)

Decision Creates New Precedent

New Law: An engagement is a testing period. No benefit is obtained by assessing blame if the engagement is ended. A ring is given in expectation of marriage. If no marriage occurs, the ring must be returned.

Fact Set: After a bench trial, the trial judge concluded that the fiancé is at fault for ending the engagement on the mistaken belief that his fiancée was having an affair with another man.

Legal Outcome: The judgment of the trial court is overturned. The ring belongs to the fiancé and the fiancée must return it if the engagement is broken off.