

1970

Marilyn Hinkins v. Al Santi : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Hinkins v. Santi*, No. 12067 (Utah Supreme Court, 1970).
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IN THE SUPREME COURT OF THE STATE OF UTAH

MARILYN HINKINS,
Plaintiff-Respondent,

vs.

AL SANTI,
Defendant-Appellant.

Case No.
12067

BRIEF OF APPELLANT

Appeal from Judgment of Contempt of the
District Court of Salt Lake County, Utah,
Honorable Merrill C. Faux

PHIL L. HANSEN
Attorney for Defendant-Appellant
410 Empire Building
Salt Lake City, Utah 84111

RONALD C. BARKER
Attorney for Plaintiff-Respondent
2870 South State Street
Salt Lake City, Utah 84115

FILED
AUG 26 1970

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARILYN HINKINS,

Plaintiff-Respondent,

vs.

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Defendant-Appellant.

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12067

BRIEF OF APPELLANT

NATURE OF THE CASE

During the course of the above-entitled action, the defendant-appellant was held in contempt of the District Court of Salt Lake County, State of Utah, the Honorable Merrill C. Faux, presiding. This appeal is concerned only with this contempt adjudication.

DISPOSITION IN LOWER COURT

On April 9, 1970, Honorable Merrill C. Faux, Judge, State of Utah, held appellant in contempt of court.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the judgment against him vacated.

STATEMENT OF FACTS

On July 25, 1969, a permanent restraining order was imposed against appellant enjoining him from any further contact with Marilyn Hinkins. On April 9, 1970, after a hearing on an order to show cause, the appellant was found in contempt of court for failure to comply with the restraining order. Appellant was sentenced to fifteen days in the Salt Lake County Jail, ten days of which were suspended upon the offer of payment of \$100 attorney's fees. Appellant's committal to the county jail was stayed pending the outcome of this appeal.

ARGUMENT

POINT I

SINCE THERE ARE NO WRITTEN FINDINGS, CONCLUSIONS, OR JUDGMENT, THERE IS NO PROPER FOUNDATION TO SUPPORT A JUDGMENT OF CONTEMPT AGAINST APPELLANT AND, THEREFORE, SAID JUDGMENT MUST BE VACATED.

It is firmly established that Utah law requires written findings of fact and conclusions of law and a written

judgment reciting the facts and conclusions upon which the court based its opinion before any judgment of contempt can be upheld. *Neilson v. Dennett*, 22 Utah 2d 166, 450 P.2d 93 (1969); *Powers v. Taylor*, 14 Utah 2d 118, 378 P.2d 519 (1963); *Brown v. Cook*, 123 Utah 505, 260 P.2d 544 (1953); *Parrish v. McConkie*, 89 Utah 396, 35 P.2d 1001 (1934).

In the instant case, the appellant was held in contempt of court for violating a previous order of the court and sentenced to spend five days in jail and pay \$100 attorney's fees (Transcript, page 67) without any written findings, conclusions, or judgment of the court. The reasoning of the court supporting this judgment against appellant is evidenced only by statements in open court, and this simply does not meet the requirements of Utah law.

The case of *Powers v. Taylor*, 14 Utah 2d 118, 378 P.2d 519 (1963), is so remarkably similar to the case at hand that a similar result is inescapable if *stare decisis* has any meaning at all. In *Powers*, the same district court judge found that appellant in contempt for the same reason, imposed the same sentence, and committed the same error as in the present case.

The lower court in *Powers*, as in the instant case, had imposed an injunction upon the appellant and later held him in contempt for violating that injunction. While the judge in *Powers*, by his statements in open court, made clear the reason for the judgment of contempt, he did not make any written findings or conclu-

sions, and the recitals contained in a written "judgment" were inconsistent with his oral declarations. The Utah Supreme Court, in a unanimous opinion, vacated this judgment, stating:

Unfortunately from the standpoint of the validity of the judgment, perhaps fortunately from the viewpoint of the defendant, no written findings as such were made. In a document labeled "Judgment," there are certain recitals, which, if regarded as findings, are not in conformity with the court's idea as to the defendant's contempt expressed above.

* * *

The essence of contempt of court is the wilful disregard or disobedience of its orders [cases cited]. Inasmuch as it is punishable by the traditional criminal sanctions of fine and imprisonment, it partakes of the nature of criminal proceedings and is sometimes referred to as quasi-criminal [cases cited]. Because of this it is essential that the rights of one so accused be carefully safeguarded. He must be apprised of the nature of the accusation; afforded an opportunity to meet it; and in order to justify a finding and sentence for contempt the proof should be clear and satisfactory that the contemner was in violation or defiance of the court's order [cases cited]. *When this is done it is necessary for the court to make written findings upon the specific conduct found to be contemptuous, and draw its conclusions and enter judgment thereon* [cases cited]. As above indicated, the court made no written findings as such and the recitals contained in the "Judgment" were inconsistent with express declarations by the court as to any contempt that

may have existed [cases cited]. It is therefore evident that there is no proper foundation to support a judgment of contempt. Accordingly, it must be, and is hereby, vacated. Costs to appellant. (Emphasis added.) 14 Utah 2d at 120-121.

In this case, as in *Powers*, there are no written findings or conclusions to support the judgment of contempt.

In *Powers*, the record did contain a written judgment, but this could not support the contempt adjudication because its recitals were inconsistent with the trial court's oral statements. In this case a written judgment does not even exist.

This court in *Powers v. Taylor, supra*, has unanimously held that contempt judgments based upon such improper foundations must be vacated. *Stare decisis* now compels this result.

CONCLUSION

For the foregoing reasons it is respectfully contended that the judgment of contempt rendered against appellant be vacated.

Respectfully submitted,

PHIL L. HANSEN
Attorney for Defendant-Appellant
410 Empire Building
Salt Lake City, Utah 84111