

1975

Kae Nichols v. State of Utah, Utah State Hospital,
Mental Health Division of Social Services
Department of the State of Utah, and Garth
Harrison : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

OF THE
STATE OF UTAH

KAE NICHOLS,

Plaintiff-Appellant,

vs.

STATE OF UTAH, UTAH STATE
HOSPITAL, MENTAL HEALTH
DIVISION OF SOCIAL SERVICES
DEPARTMENT OF THE STATE OF
UTAH, and GARTH HARRISON,

Defendant-Respondent.

CASE NUMBER

14428

BRIEF OF APPELLANT

Appeal from a ruling of the Fourth Judicial District Court
for Duchesne County, State of Utah, Allen B. Sorensen, Judge.

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FILED

MAR 15 1976

KAE NICHOLS,

Plaintiff-Appellant,

vs.

STATE OF UTAH, UTAH STATE
HOSPITAL, MENTAL HEALTH
DIVISION OF SOCIAL SERVICES
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AUTHORITIES CITED

STATUTES:

Utah Rules of Civil Procedure, Rule 15(a)

CASES:

Foman v. Davis, 371 U.S. 178 (1962).

Thomas Peck v. Lee Rock Products, 30 Utah2d 187, 193 (1973).

Gillman v. Hansen, 26 Utah2d 165 (1971).

Johnson v. Brinkerhoff, 89 Utah 530, 57 P.2d 1132 (1936).

Bonneville Lumber Co. v. Peppard Seed Co., 72 Utah 463, 271
P. 226 (1928).

SECONDARY AUTHORITIES:

4 A.L.R. Fed. 123 (1970).

Moore's Federal Practice, Section 15.08.

71 C.J.S. Pleading, Sections 275b., 281b., 282a.

49 C.J. Pleading, Sections 600(c) and 605.

IN THE
SUPREME COURT
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STATE OF UTAH

KAE NICHOLS,
Plaintiff-Appellant,

vs.

STATE OF UTAH, UTAH STATE
HOSPITAL, MENTAL HEALTH
DIVISION OF SOCIAL SERVICES
DEPARTMENT OF THE STATE OF
UTAH, and GARTH HARRISON,

Defendant-Respondent.

CASE NUMBER

14428

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action for damages, declaratory relief and an injunction, charging approximately twenty-six counts or violations of civil rights under 42 U.S.C. Section 1983, Utah State statutory rights, and violations of constitutional rights guaranteed by the Constitution of Utah and the United States of America for the emergency involuntary commitment of Mrs. Kae Nichols to the Duchesne County Jail and the Utah Mental Hospital in Provo, Utah.

DISPOSITION IN LOWER COURT

The lower court granted the defendants' Motion to Dismiss plaintiff's Complaint, without comment, on February 5, 1975. Plaintiff moved for leave to file an amended complaint on November 24, 1975. The lower court denied plaintiff's Motion to Amend the Complaint. Plaintiff-Appellant appeals from that denial.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks a determination by this Court that the ruling of the lower court in denying plaintiff leave to amend the Complaint constituted an abuse of discretion, was erroneous and should be reversed.

STATEMENT OF FACTS

1. On or about July 2, 1974, the Plaintiff, Kae Nichols, a married female, was involuntarily committed first in the Duchesne County Jail, then in the Utah State Hospital at Provo, Utah, pursuant to an application for emergency involuntary hospitalization under Section 64-7-36, Utah Code Annotated, 1953, as amended. (R-2; letter from Garth Harrison to Wilfred Higashi between R-15 and R-16.)

2. On July 12, 1974, Plaintiff filed a petition for writs of habeas corpus ad deliberandum et recipiendum and habeas corpus ad subjiciendum (the Great Writ of Liberty) pursuant to

U.R.C.P. Rule 65 B, Article 1, Section 9 of the United States Constitution and Article 1, Section 5 of the Utah Constitution.

3. No adversary hearing was ever held. Judge Allen B. Sorensen, sitting in Utah County, refused Plaintiff's attorney the right to make any oral argument for release of plaintiff at the time set for hearing. No writs of habeas corpus were issued. Plaintiff was held against her will for twenty-two days and then released. (R-20, 35, 36, 37, 48)

4. Plaintiff filed a complaint and petition for declaratory judgment against defendants, the State of Utah, et al, on or about August 22, 1974, in the Duchesne County District Court of the Fourth Judicial District, J. Robert Bullock, presiding. The ten page complaint alleged approximately twenty-six counts or violations of rights guaranteed the plaintiff by the statutes of Utah, the statutes of the United States, and the Constitutions of both the State of Utah and the United States of America, including such issues as the right to counsel, right to a jury trial, right to be confronted by the witnesses against her, right to be informed of the basis of her detention, right to an adversary hearing, right to a female attendant, burden of proof, right to cross examination, right to discovery, right to writs of habeas corpus, improper notice, illegal change of the

place of hearing, violation of due process of law, unconstitutional vagueness in the statute, no compelling state interest for commitment, indeterminate incarceration, derogation of civil rights under 42 U.S.C. Section 1983, elimination of rules of evidence, deprivation of procedural safeguards, and unconstitutional post-admission remedies. (R-1 through 15)

5. Defendants answered the complaint on September 11, 1974. On September 13, 1974, defendants made a motion to dismiss plaintiff's complaint. (R-16, 17, 18, 19, 27, 28)

6. Counsel for plaintiff withdrew temporarily from October 31, 1974, to January 6, 1975, upon request of the County Attorney for Duchesne to avoid the appearance of a conflict of interest while plaintiff's counsel was a part-time deputy county attorney. Plaintiff filed her objection to the motion for dismissal on January 6, 1975. (R-33, 34, 38, 39, 21, 22, 23, 29 through 37)

7. J. Robert Bullock, District Judge, in a memorandum ruling dated February 5, 1975, granted the defendants' motion without reason or comment.

8. Plaintiff's counsel typed a Notice of Appeal, but could not get in contact with plaintiff, who had moved out of state,

in time to file the Notice of Appeal within the statutory time limit. (R-51, 52, 53, 56, 57, 58, 59, 60)

9. Plaintiff's counsel made diligent efforts to contact plaintiff out of state for the signing of the Affidavit for appeal and thereafter finally, after publishing notice in a foreign state newspaper, reinstated contact with the plaintiff approximately nine months after the motion to dismiss was granted. Plaintiff then promptly filed a motion for leave to file an amended complaint pursuant to Rule 15(a) U.R.C.P., on November 24, 1975. Defendants opposed the motion for an amended complaint. (R-51, 52, 53, 56, 57, 58, 59, 60, 54, 55)

10. Allen B. Sorensen, District Judge, replacing Judge Bullock in circuit for Duchesne County, in a ruling dated December 19, 1975, held that the court was without jurisdiction to entertain the motion, which motion was denied with a comment as to the length of time elapsing between the dismissal of the action on February 5, 1975, and the motion to amend filed November 24, 1975, a period of nine months. (R-61)

11. Plaintiff now appeals from the lower court's denial of leave to amend the complaint on the grounds of prejudicial abuse of discretion.

ARGUMENT

POINT 1.

THE LOWER COURT HAD JURISDICTION TO ENTERTAIN THE MOTION TO AMEND.

It is well settled that a court of general jurisdiction has the authority to grant leave to amend a complaint either before or after a motion to dismiss the complaint is allowed. As a general rule pleadings may, in the discretion of the court and in furtherance of justice, be amended at any stage of the procedure. 49 Corpus Juris, Pleading, Section 605, p. 477.

"As a rule, the court in its discretion may permit pleadings to be amended at any stage of the proceedings, even after issue has been joined and the case set for trial, and, in a proper case, even after verdict or trial."

71 Corpus Juris Secundum, black letter summary, Pleadings, Section 282 a., p. 598.

This is the rule in Utah, and particularly where the motion to amend comes before the trial. Johnson v. Brinkerhoff, 89 Utah 530, 57 P.2d 1132 (1936), cited in 71 C.J.S. at p. 598; Gillman v. Hansen, 26 Utah2d 165, 168, 486 P.2d 1045 (1971).

The time when a motion to amend is filed does not in any way affect the jurisdiction of the court to entertain the motion. Moore's Federal Practice, Section 15.08, p. 901, citing: Fli-Fab, Inc. v. United States (D RI 1954) 16 FRD 553, 556, 21 FR Serv 15a. 21, Case 1; Standard Ins. Co. v. Pittsburgh Electrical Insulation, Inc. (WD Pa 1961) 29 FRD 185 (mere delay is not

reason enough to bar amendment where no prejudice is shown); Adams v. Beland Realty Corp., (FD NY 1960) 187 F.Supp. 680, 3 FR Serv2d 15a.32, Case 5 (same); Bowles v. American Brewery, Inc. (D MD 1945) 8 FR Serv 15a.21, Case 13 (same); Armstrong Cork Co. v. Patterson-Sargent Co. (ND Ohio 1950) 10 FRD 534, 14 FR Serv 15a.212, Case 1; Lloyd v. United Liquors Corp. (CA 6th, 1953) 203 F.2d 789, 18 FR Serv 15a.24, Case 3; Maschmeijer v. Ingram (SD NY 1951) 97 F.Supp. 639, 15 FR Serv 12f.26, Case 4.

POINT 2.

IT IS AN ABUSE OF DISCRETION FOR THE LOWER COURT TO
REFUSE LEAVE TO AMEND WHERE NO PREJUDICE WAS CAUSED

71 Corpus Juris Secundum states the general rule at Section
281 b. (black letter summary):

"In determining whether to permit an amendment of a pleading, the court will exercise its discretion liberally in furtherance of justice, where no prejudice or surprise to the adverse party will result . . ."

Also see 49 C.J., Pleading, Section 600(c), p. 475.

Lack of a showing of prejudice has been identified many times by the Utah Supreme Court as a basis for reversing the lower court for abuse of discretion. Johnson v. Brinkerhoff, 89 Utah 530, 57 P.2d 1132, 1136 (1936), ("No prejudice is alleged or shown"); Taylor v. E. M. Royle Corp., 1 Utah2d 175, 264 P.2d 279, 280 (1953), (quoting Justice Crockett in Morns v. Russell, 236 P.2d 451, 455, "or in any way prejudiced"); Thomas

Peck & Sons v. Lee Rock Products, Inc., 30 Utah2d 187, 193

(1973), ("no prejudice in this case"); Gillman v. Hansen, 26

Utah2d 165, 167, 486 P.2d 1045 (1971), (little adverse effect).

"Recognizing that the entire spirit of the rules is to the effect that controversies shall be decided on the merits, the courts have not been hesitant to allow amendments for the purpose of presenting the real issues of the case, where the moving party has not been guilty of bad faith and is not acting for the purpose of delay, the opposing party will not be unduly prejudiced, and the trial of the issues will not be unduly delayed."

Moore's Federal Practice, Section 15.08, p. 875.

Neither prejudice nor any of these elements was shown by the defendants to be existent in the plaintiff's motion to amend.

Also see "Timeliness of Amendments to Pleadings Made by Leave of Court Under Federal Rule of Civil Procedure 15(a)", 4 A.L.R. Fed. 123 (1970), which states:

"Motions to amend pleadings made before trial have been granted in the exercise of the court's discretion under Rule 15(a) of the Federal Rules of Civil Procedure upon a satisfactory showing that the movant was not guilty of bad faith nor was he acting for purposes of delay, that the opposing party would not be unduly prejudiced, and that the trial of the issues would not be unduly postponed." (p. 132)

The article goes on to point out the critical nature of the element of prejudice saying:

"The absence of prejudice or injustice to the opposing party is the reason most frequently emphasized by courts in granting, over an objection, that it was not timely, a motion to amend before trial." (p. 133)

The article cites twelve cases nationwide along with the elapsed time between service of the pleading sought to be amended and the actual motion to amend. The average elapsed time of those twelve cases comes to twenty months, over twice as long as the case at bar.

POINT 3.

PLAINTIFF'S DELAY IN SEEKING LEAVE TO AMEND WAS EXCUSABLE.

Belated motions to amend pleadings before trial under Rule 15(a) are allowed where the delay is excused by a showing of extenuating circumstances. 4 A.L.R. Fed. 123 (1970) at page 136, citing: Wittmayer v. United States (1941 CA 9 Mont) 118 F.2d 808; Schwab v. Nathan (1948, DC NY 8 FRD 228); System Federation No. 152, Railway Employees Dept. v. Pennsylvania R. Co. (1967 DC NY) 272 F.Supp. 971; Spicer v. Pennsylvania R. Co. (1961, DC Pa) 196 F.Supp. 679; and Fli-Fab, Inc. v. United States (1954, DC RI) 16 FRD 553.

Plaintiff, in the case at bar, left the State of Utah. Her counsel had difficulty in locating her for nine months. His efforts at trying to locate her, including an ad in a newspaper, indicate his good faith and diligence. Plaintiff should not be penalized for the procedural vicissitudes of the system and barred forever from recovery. See Gillman v. Hansen, 26 Utah2d 165, 168.

POINT 4.

THE PREVAILING RULE IS TO GRANT LEAVE TO AMEND FREELY TO FURTHER JUSTICE.

The prevailing rule of law throughout American jurisdictions is toward great liberality in the allowance of amendments to the end that the cause may be decided on its merits and every man receive his day in court. 49 C.J. Pleading, Section 582, p. 466; 71 C.J.S. Pleading, Section 275 b. (black letter summary) p. 580; Moore's Federal Practice, Section 15.08, p. 873; Foman v. Davis (reaffirming the mandate of Rule 15(a), 371 U.S. 178, 83 S.Ct. 227, 9 L.ed2d 222 (1962); Am.Jur., Pleading (1st Ed. Section 292); "Timeliness of Amendments to Pleadings Made By Leave of Court Under Federal Rule of Civil Procedure 15(a)", 4 A.L.R. Fed. 123, 131 (1970).

The Utah case law has always been in accord with this important principle. As recently as 1973 this court said in a unanimous opinion in regards to the lower court allowing an amendment:

"Some tempest has been raised about the court allowing the plaintiff to make tardy amendments to the pleadings. In doing so he (lower court judge) wisely and properly stated: 'The pleadings are never more important than the cause that is before the court There can be no prejudice in this case because we'll give ample time for an answer' This is in harmony with what we regard as the correct policy: of recognizing the desirability of the pleadings setting forth definitely framed issues, but also of permitting amendment where the interest of justice so requires"

Thomas Peck & Sons v. Lee Rock Products, 30 Utah2d 187, 193 (1973).

Well could the court say to the case at bar, as it said in Gillman v. Hansen, 26 Utah2d 165, 167, 486 P.2d 1045 (1971): "If ever there was a case where justice would require an amendment, this case seems to be one."

The discretion of the lower court is subject to being exercised:

"... in the furtherance of justice and must not be exercised so as to defeat justice. The rule in this state has always been to allow amendments freely where justice requires, and especially is this true before trial."

Gillman v. Hansen, 26 Utah2d 165, 168 (1971), citing Johnson v. Brinkerhoff, 89 Utah 530, 57 P.2d 1132 (1936), where the court quoted the rule in 49 C.J. 466. Also see Bonneville Lumber Co. v. J. G. Peppard Seed Co., 72 Utah 463, 271 P. 226 (1928).

Plaintiff had over twenty different rights breached and disregarded by the defendants before being returned to freedom after twenty-two days behind locked doors. To refuse her the right to have at least the opportunity to state a good complaint for those wrongs, when allowing the amendment causes no prejudice to the defendants, and before a trial, is manifest injustice. Plaintiff deserves her day in court on the merits, and the lower court's refusal to give her that is abuse of discretion.

CONCLUSION

The lower court had jurisdiction to entertain the motion to amend. Allowing amendment of the complaint would have been proper. There was no record of any prejudice to the defendants if the amendment would have been granted. Plaintiff's delay in requesting an amendment was not unreasonable and was excusable. The long settled rule in Utah is to allow leave to amend freely in the furtherance of justice, especially before trial. The denial by the lower court of leave to amend totally defeated plaintiff's rights to trial on the merits, her day in court, and was a prejudicial abuse of discretion.

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