

1976

Barbara Smith v. Lyman S. Shreeve : Brief of Appellant

Utah Supreme Court

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13 JUN 1977

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT
OF THE STATE OF UTAH

BARBARA SMITH, :
)
 Plaintiff and Appellant, :
)
 vs. : Case No. 14,410
)
 LYMAN S. SHREEVE, :
)
 Defendant and Respondent. :

REPLY BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT ENTERED ON THE
JURY VERDICT OF THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY, STATE OF UTAH,
THE HONORABLE MAURICE HARDING, JUDGE

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FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

BARBARA SMITH,

Plaintiff and Appellant,)

vs.)

LYMAN S. SHREEVE,

Defendant and Respondent.)

Case No. 14,410

REPLY BRIEF OF APPELLANT

RELIEF SOUGHT ON APPEAL

The appellant has asked the Court to declare the award of the trial court inadequate as a matter of law and to have the case remanded to the lower court for a new trial. Appellant submits that the only issue that needs to be remanded is the issue of damages, since the issue of liability is conceded and well established.

POINT I

THE COURT SHOULD REMAND THE CASE TO THE LOWER COURT FOR TRIAL ON THE ISSUE OF DAMAGES ONLY.

Respondent, in his brief, has essentially admitted liability. (Brief of Respondent, page 14). Appellant submits that there is no dispute as to the liability of the defendant or the facts of the case. Appellant submits that the respondent misinterpreted the thrust of appellant's brief and that appellant on appeal is merely seeking a remand to the

lower court for a trial on the issues of damages inasmuch as the award for special damages was totally inadequate. As stated in the Brief of Appellant, the trial court awarded \$2,000.00 general damages and nothing for the special damages proved by the appellant. It is appellant's position, therefore, that the trial court erred in failing to grant a new trial on the issue of damages.

Rule 59(a) of the Utah Rules of Civil Procedure provides for a new trial "on all or part of the issues." Several courts have held that a new trial on the question of damages may be granted if the verdict is grossly and manifestly inadequate or if the amount awarded is so small as to clearly and definitely indicate that the jury neglected to take into consideration evidence of pecuniary loss or that they were influenced either by prejudice, passion or other improper considerations. In King v. Avila, 127 Col. 538, 259 P.2d 268 (1953), the Court held that an award of only \$2,000.00 to a young man with a life expectancy of 41 years who had permanent disability of 30% and a working disability of 25% and who had incurred definite hospital and other medical expenses for the injuries caused by the defendant's negligence, was so grossly and manifestly inadequate as to justify the granting of a new trial on the issue of damages alone. The court relied upon the Rules of Civil Procedure, Rule 59, in making its decision.

A similar decision was reached in Cox v. Tyrone Power Enterprises, 49 C.A.2d 383, 121 P.2d 829 (1942), wherein the court held that a verdict of \$1250.00 general damages for a

plaintiff who showed \$450.00 worth of doctor bills and \$361.00 worth of hospital bills and the items for doctors and hospitals were not disputed, the granting of the motion for new trial on the sole issue of damages because of the insufficiency of the award for special damages, did not constitute an abuse of discretion of the trial court.

For additional cases see: Baum v. City and County of San Francisco, 42 C.A.2d 144, 108 P.2d 989 (1940); Cote v. Allen, 50 Wash.2d 584, 313 P.2d 693 (1957); Tornell v. Munson, 180 C.A.2d 123, 181 P.2d 112 (1947).

In Tornell v. Munson, supra, the court held that an award of a new trial on the issue of damages only was not an abuse of discretion in light of the contention by the defendant that the inadequate verdict was, as a matter of law, the result of compromise on the issue of liability and that, therefore, a new trial on all issues should have been awarded. The court held that where the jury had awarded some damages, although inadequate, a new trial may be granted solely on the issue of damages.

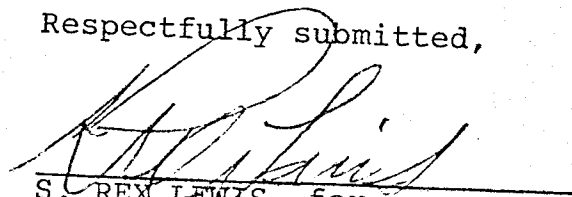
In the Supreme Court of Utah in Highland v. St. Mark's Hospital, 19 U.2d 134, 427 P.2d 736 (1967), recognized that,

"There are undoubtedly some instances where limiting a trial to the issue of damages only may be justified, as our rules allow."

It is the appellant's contention that the question of liability has been resolved against the defendant in the present case and that the problem with the case is that the jury completely misunderstood its duty in awarding damages and failed to award any amount for the special damages that

were proved at trial. Appellant, therefore, contends that a proper solution would be to remand the case to the trial court for a trial on the issue of damages only.

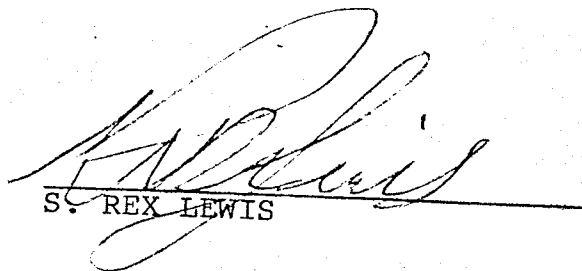
Respectfully submitted,



S. REX LEWIS, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Appellant

MAILING CERTIFICATE

I certify that I mailed two (2) copies of the foregoing Appellant's Reply Brief to David E. West, Attorney for Respondent, 1300 Walker Bank Building, Salt Lake City, Utah 84111, this 2nd day of June, 1976.



S. REX LEWIS

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