2000

Maurine C. Baird v. Intermountain School Federal Credit Union : Brief of Appellant

Utah Supreme Court

Carl T. Smith; Attorney for Plaintiff-Appellant.
Jack H. Molgard; Attorney for Defendant-Respondent.

IN THE SUPREME COURT FOR THE
STATE OF UTAH

MAURINE C. BAIRD, aka
MAURINE C. SHURTLEFF,

Plaintiff - Appellant,

v.

INTERMOUNTAIN SCHOOL FEDERAL
CREDIT UNION,

Defendant - Respondent.

Case No.
14451

BRIEF OF APPELLANT

Appeal from the Decision of the First Judicial
District Court for Box Elder County, Utah
The Honorable VeNoy Christoffersen, Judge

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IN THE SUPREME COURT FOR THE

STATE OF UTAH

MAURINE C. BAIRD, aka MAURINE C. SHURTLEFF,	)	
Plaintiff - Appellant,	)	
-vs-	)	Case No.
INTERMOUNTAIN SCHOOL FEDERAL CREDIT UNION,	)	14451
Defendant - Respondent.	)	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action brought by the plaintiff for special and punitive damages based on defendant's wrongful actions which resulted in plaintiff's incarceration in the Box Elder County Jail, violating her constitutional rights.

DISPOSITION IN LOWER COURT

The District Court Judge, Venoy Christoffersen, dismissed the Complaint for its failure to state a claim upon which relief could be granted.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of this dismissal and asks this Court to remand the case back to the District Court for the necessary discovery and trial.

STATEMENT OF FACTS

The defendant filed a Complaint on a promissory note in the City Court of Brigham City, Box Elder County, on February 20, 1975 (Tr 10 & 11). On March 25, 1975, the attorney and agent of the defendant sent a letter to the plaintiff (Tr 49), which reflects the dispute on the accounting in the matter and specifically stating: "Also, this letter should serve as notice to you that if I do not receive your payment in the full amount of Eight Hundred Thirty and 61/100 Dollars ($830.61) or your answer to my Complaint within said five (5) day period, I will proceed to take Default Judgment against you." The plaintiff followed those instructions by sending an answer to the Complaint to the attorney as directed. The answer, however, was not filed with the Clerk of the Court and apparently is still being held by the attorney. On May 20, 1975, the defendant forwarded to plaintiff an accounting reflecting that the full balance owing was Eight Hundred Three and 11/100 Dollars ($803.11), which amount was paid May 26, 1975 (Tr 50 & 51). Subsequently, the harrassment continued with supplemental orders, executions, bench warrants and finally, commitment in the Box Elder County Jail on August 1, 1975 (Tr 25 thru 40), based upon a contempt of Court charge relating to this matter. Apparently, this commitment was for an indefinite period of time, although a release was obtained based upon a telephone conversation with plaintiff's attorney and Judge Daines, together with an agreement to provide One Hundred Sixty and 00/100 Dollars ($160.00) (Tr 41).

ARGUMENT

POINT I

A JUDGMENT BY DEFAULT IS NOT FAVORED BY THE COURTS AND RELIEF THEREFROM SHOULD BE GRANTED WHERE POSSIBLE.

Long standing judicial and public policy requires that a default judgment should be voided whenever possible. As early as 1898, the Utah Supreme Court stated its opinion in this regard. Utah Commercial and Savings Bank v. Trumbo, 17 Utah 198, 53 P. 1033, 1036 (1898):

> "Such is not the law and the courts do not favor judgments by default. The policy of the law is that every man shall have his day in court before judgment shall be entered against him,...."

This aversion to default judgments has been restated more recently in Heathman v. Fabian & Clendenin, 14 Utah 2d 60, 377 P2d 189, 190 (1962):

> "Judgments by default are not favored by the courts nor are they in the interest of justice and fair play. No one has an inalienable or constitutional right to a judgment by default without a hearing on the merits. The courts, in the interest of justice and fair play, favor, where possible, a full and complete opportunity for a hearing on the merits of every case."

See also Rule 55(c) and Rule 60(b) U.R.C.P.; McKean v. Mountain View Memorial Estates, Inc., 17 Utah 2d 323, 411 P2d 129 (1966); and Ney v. Harrison, 5 Utah 2d 217, 299 P2d 1114 (1956).

The reason behind the policy disfavoring default judgments is a basic one embraced by our society and found in the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law. In the landmark case of Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972) (cited for its reasoning and not its facts) the United States Supreme Court said:

> "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions."

The default judgment against the plaintiff, Maurine C. Baird, acted to drprive her of her property (money) and was wrongfully taken, thus violating her right to have her day in court and to be heard.

POINT II

THE COURT IMPROPERLY DISMISSED PLAINTIFF'S COMPLAINT ON THE GROUNDS THAT IT FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The defendant filed a Complaint against the plaintiff in the City Court of Brigham City, Box Elder County, Utah on the 20th day of February, 1975 (Tr 10 & 11). On February 26, 1975, the Sheriff served a summons on the plaintiff (Tr 15) which directed her to file an answer to the Complaint in the City Court within twenty (20) days, and to also send a copy of the answer to the defendant's attorney (Tr 16).

On March 25, 1975, defendant's attorney superseded these instructions by sending plaintiff a letter which directed her to either pay the amount allegedly due or else send him an answer to the Complaint within five (5) days. Defendant's attorney made no mention of filing an answer with the Court, but only requested that "I" receive an answer to "my" Complaint (Tr 49). Plaintiff complied with this request by mailing defendant an answer to the Complaint but, in spite of this, defendant's attorney proceeded to file a Precipe for Default Judgment on April 10, 1975 (Tr 18).

Plaintiff, not having the benefit of counsel and being unskilled in the law, believed that she had complied with the law when she sent defendant's attorney an answer to the Complaint. The fact is the answer never found its way to the Clerk of the Court and is apparently still being held by defendant's attorney. Since plaintiff made a good faith effort to work within the judicial system, all doubts should be decided in her favor, especially since she was directly misguided by defendant's attorney, who failed to execute that same good faith and file her answer with the court. Chrysler v. Chrysler, 5 Utah 2d 415, 303 P2d 995 (1956). Had he so filed the answer, the default judgment would have been prevented, and plaintiff would have had her day in court. As it now stands, she was precluded that right through defendant's attorney's misguidance and defendant should not be allowed to benefit because of that misguidance.

In Heathman v. Fabian & Clendenin, supra, a case involving a default judgment, the court said:

> "It was clearly the duty of the law firm to do what it could acting fairly and openly, to prevent the court from entering a default judgment against Hatch without hearing its claim that the default certificate was obtained on account of excusable neglect."

In that case, the law firm had represented, in a prior suit, a party against whom a judgment of default was entered. The law firm moved to set aside that judgment because of excusable neglect in failing to file a timely pleading. In this case, we have the lawyer representing the party in favor of whom the

default judgment was granted, and the other party unrepresented by counsel. But can there be any less of a duty imposed on the lawyer in this case to prevent a default judgment by filing the answer to the pleadings when he has them in hand than there was in Heathman, supra?

Rule 60(b)(3) of the Utah Rules of Civil Procedure provides that the court can relieve a party from a final judgment in the furtherance of justice when there has been misrepresentation or other misconduct of an adverse party.

Although this provision more specifically applies to an appeal from, or motion to dismiss, a default judgment, which must be brought within three months of that judgment, it is clear that misguidance of adverse counsel is looked on with disfavor and shouldn't be tolerated. The present action is not an appeal from or motion to dismiss the default judgment rendered in the Brigham City Court, but is an independent cause of action based on defendant's attorney's misguidance in that case. Therefore, the time limitations of Rule 60(b) do not apply.

It is true that a timely appeal to the default judgment in the Brigham City Court would have given plaintiff the opportunity to have her dispute judicially determined, but not being represented by counsel she was unaware of that right.

In Rule 60(b)(7), URCP, the rule continues to state that, besides all of the enumerated reasons for relieving a party from final judgment, that a party may also be relieved for any other reason that so justifies it. The failure of the defendant's attorney to file plaintiff's answer with the court and the subsequent harrass-

ment which resulted in plaintiff being incarcerated are sufficient reasons within the meaning of Rule 60(b)(7) to justify relief.

The trial court dismissed the present suit claiming that it failed to state a cause of action for which relief may be granted. It stated for reasoning that an appeal should have been taken from the default judgment and that the question could not be attacked collaterally (Tr 52). It is not disputed that a default judgment is considered a final judgment for the purposes of res judicata as is any other final judgment. Zion's Ben. Bldg. Soc. v. Geary, 112 Utah 548, 189 P2d 964 (1948). But where certain improprieties appear with a default judgment, the courts have been quick to allow a collateral proceeding. Bowen v. Olsen, 121 Utah 299, 246 P2d 602 (1952), can collaterally attack a void default judgment; Johnson v. Weinstern, 58 Cal. Rptr. 32 (1967), collateral attack of a default judgment is allowed when the relief granted is different than in the Complaint, and in Kern v. Maryland Casualty Co. of Baltimore Md., 112 F2d 352 (1940) at 356 the court said:

> "When a judgment by default is impugned, whatever may affect its competency or regularity is open to inquiry in a collateral proceeding."

Rule 60(b) of the Utah Rules of Civil Procedure further states that:

> "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules, or by an independent action."

In Shaw v. Cilcher, 9 Utah 2d 222, 341 P2d 949 (1959), the court held that according to Rule 60(b), the plaintiff could not

make a motion seventeen months after a final judgment to set that decree aside. It held that the issue must be raised in an independent action and said at page 950:

> "The attack here being based on fraud upon the court, and having been leveled some 17 months after the adoption decree, must have been pursued in an independent action, and not by way of motion in the original action. Otherwise, the rule would not make much sense."

See also McGavin v. McGavin, 27 Utah 2d 200, 494 P2d 283 (1972).

The present action is also an independent action within the purview of Rule 60(b), therefore, the default judgment in the Brigham City Court is not res judicata as to this cause of action and the trial court erred by dismissing plaintiff's case.

CONCLUSION

The default judgment against plaintiff was wrongfully taken in the Brigham City Court and defendant subsequently continued to harrass plaintiff through supplemental orders, executions and bench warrants, resulting in plaintiff's incarceration.

The District Court for Box Elder County erred when it dismissed this action considering the defendant's wrongful conduct in the City Court suit.

Since plaintiff was precluded her constitutional rights by being deprived of her property and liberty, the dismissal of this case should be reversed and remanded to the District Court for the necessary trial and discovery.

Respectfully submitted this 7th day of May, 1976.

CARL T. SMITH
Attorney for Plaintiff - Appellant

CERTIFICATE OF MAILING

Two copies of the foregoing Brief of Appellant were posted in the U. S. Mail, postage prepaid and addressed to the Attorney for the Respondent, Jack H. Molgard, P. O. Box 461, Brigham City, Utah 84302, this 7th day of May, 1976.

Arlene H. Trujillo
Secretary