

1987

Willes v. Blackmer : Brief of Respondent

Utah Court of Appeals

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BRIEF

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870041

IN THE UTAH COURT OF APPEALS

GENE R. WILLES,)
Plaintiff and Respondent,)
vs.) Case No. 870041-CA
Mr. & Mrs. ALDEN BLACKMER,) 13 B
Defendants and Appellants.)

BRIEF OF PLAINTIFF-RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FIFTH CIRCUIT
COURT FOR THE STATE OF UTAH, WEST VALLEY
DEPARTMENT, SMALL CLAIMS
JUDGE JOHN PARKEN

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IN THE UTAH COURT OF APPEALS

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Defendants and Appellants.)

RESPONDENT'S BRIEF

STATEMENT OF ISSUES PRESENTED ON APPEAL

This appeal concerns the purchase of an automobile, containing hidden defects, by Plaintiff-Respondent from Defendants-Appellants. The issue before the court is whether the parties were mutually mistaken as to the condition of the automobile, which had defects unknown by either party at the time of sale, thus allowing Defendant-Purchaser restitution of amounts paid beyond the fair market value of the automobile.

STATEMENT OF FACTS

On October 20, 1986, a Mr. Nathan Millett sold the subject automobile to the Defendant-Appellant for \$450.00 (R. 5:9-20). The actual mileage was over 104,000 miles and it was agreed that Mr. Millett was selling to Mr. Blackmer only the body, as the engine needed over hauling (R 5:14-18). Defendants-Appellants then sold the car less than one month

later to Plaintiff-Respondent for \$1,650.00. (R. 2:14-18). Defendants-Appellants represented to Plaintiff-Respondent that the car had a valve job approximately 200 miles before the purchase (R. 6:2-3). Ten days later, the car started burning oil profusely (R. 2:18-19) and it was determined that the valve job work had been done very poorly (R. 8:7-8). The mechanic which analyzed the car determined that the problems were of a sort that would come on over a period of time gradually and should have been noticed by Mr. Blackmer, a mechanic, when he was attempting to do the valve job (R. 20 17-19 and R. 19:22-25).

There was further testimony by the Defendants-Appellants that the automobile had 72,000 miles at the time of the sale, where in reality it had 112,000 (R. 3:3-4 and R. 3:8-12). Defendants-Appellants claim that mileage was never discussed (R. 11:10-11). Because of the conflicting testimony, the court determined that fraudulent misrepresentation was not found at least by preponderance of evidence (R. 24:11-14).

At the time of the sale, Defendants-Appellants told Plaintiff-Respondent that if there were any problems with the car to let them know (R. 14:7-8). From that statement, Plaintiff-Respondent's understood that if there were any problems with the car, that he could bring it back

and they would take care of it (R. 6:6-8). Defendants admit that they made such warranty of the automobile, but are now claiming that they are not prepared for a problem of the nature that in fact did occur (R. 14:9-11). Specifically, Defendant-Appellant said "if there was a problem that we could correct, we would do it, but to do a complete overhaul" (R. 14: 9-11). Because of these representations by the Defendants-Appellants and the fact that there were indeed substantial hidden defects in the automobile unknown by either party, the trial court properly found that a mutual mistake in fact did occur (R. 25:11-12). Pursuant to such finding of mutual mistake, the trial court properly required Defendants-Appellants to reimburse Plaintiff-Respondent monies paid for the purchase of said automobile beyond the fair market value of said automobile.

SUMMARY OF ARGUMENT

The facts presented at the initial trial show that Plaintiff-Respondent had absolutely no knowledge of the hidden defects in the automobile, causing it to need an overhaul, as the automobile ran very nicely for ten days because of a recent valve job. However, the facts also show that the Defendants-Respondents purchased the automobile one month prior to the sale to Plaintiff-Respondent knowing that it needed some work on the engine. Defendant did a valve

job thinking this would take care of the work needed on the car. Testimony is conflicting as to whether Defendants-Appellants made fraudulent misrepresentations and the trial court, therefore, determined the Defendants-Appellants did not make fraudulent representations because they did not know of the defects in the car. Giving the Defendants-Appellants the benefit of the doubt and finding that they did not purposefully make fraudulent representations to Plaintiff-Respondent, there was mutual mistake as to the true condition of the automobile. Further, the Defendants-Appellants, by their own admissions, state that they were willing to correct any problems with the automobile, presumably within a reasonable time after the sale after Plaintiff-Respondent had time to test the automobile out.

ARGUMENT

I. THE TRIAL COURT PROPERLY FOUND A MUTUAL MISTAKE IN FACT EXISTED AS TO THE CONDITION OF THE AUTOMOBILE.

In Jacobs v. Phillippi, 697 P.2d 132 (N.M. 1985), the Supreme Court of New Mexico stated that a contract is void because of mutual mistake where the minds of the parties have not met on any part of the proposed contract. This statement of the law correctly summarizes the majority rule for mutual mistake. See also Renner v. Kehl, 722 P.2d 262 (Ariz. 1986); Mat-Su/Blackert/ Stephan & Sons v. State, 647 P.2d 1101 (Alaska 1982) and Shopping Centers of America, Inc. v. Standard Growth Property Inc. 509 P.2d (Or. 1973).

The facts in Renner v. Kehl, are similar to the facts presently before the court. In Renner v. Kehl, the Defendants sold their interest in real property to Plaintiffs knowing the Plaintiffs were planning on using the land for jojoba productions. Both parties were of the opinion that sufficient water was available beneath the land to sustain jojoba production. After developing the land and finding that the underground aquifer was insufficient, Plaintiffs sought to rescind the purchase contract. The court allowed rescission on the theory of mutual mistake because both parties were mistaken as to the quality and quantity of water. Similarly, in the present case, the trial court found both parties were mistaken as to the quality of the automobile, thus, a mutual mistake had occurred as to the automobile's true condition.

Established facts evidencing such mutual mistake are as follows:

1. Mr. Blackmer stated that there was nothing wrong that he knew with the automobile and that he fixed what he was aware of, which included the heads and the belt.

2. Mrs. Blackmer stated that she hoped that Plaintiff-Respondent enjoyed the car and that if there were any problems to let them know. Mrs. Blackmer further testified that they were not prepared for a problem as that

which in fact arose. These statements evidenced that they had no knowledge that the car was in as bad a shape as it turned out to be.

3. Mr. Blackmer is a mechanic and analyzed the automobile, giving it a valve job and then selling the automobile for the fair market value of \$1,650.00, \$800.00 more than he paid for it less than one month prior thereto, therefore showing that in his own mind the work he had done cured the major problems of the automobile, making it worth the book value.

4. Plaintiff-Respondent bought the car at the blue book value which a reasonable person would not have done had they known that the automobile's major defects and would require \$1,600.00 to correct.

Defendants-Appellants cite the famous cases of Sherwood v. Walker, 33 N.W. 919 (Mich. 1887) and Wood v. Boynton 25 N.W. 42 (Wis. 1885). These cases applied the mutual mistake doctrine where the parties to the transaction were unaware of the value of the subject property. Similarly, the facts of the matter before the court also show that both the seller and buyer were unaware of the value and quality of the automobile. In fact the work done by the Defendants-Appellants created the situation in which the automobile appeared to be in good condition for approximately 10 days

of use, at which time it began burning oil profusely and the hidden problems of the vehicle became evident. Up to that point in time, the parties had thought the automobile was in good condition at the time of sale as represented by Defendants-Appellants.

Furthermore, the Utah Supreme Court in Kiahtipes v. Mills, 649 P.2d 9 (Utah 1982), stated that unilateral as well as mutual mistake may provide the basis for the rescission of contracts. In other words, assuming that even if Defendants-Appellants did have knowledge of the defective condition of the automobile and further assuming that there is no fraud in failing to disclose such condition to the Plaintiff/purchaser, the Utah courts are willing to find that a contract can be rescinded where to Plaintiff/purchaser was mistaken as to the knowledge of the automobile. Additionally, as the Supreme Court stated in Hidden Meadows Development Company v. Mills, 590 P.2d 1244 (Utah 1978), rules of appellate review generally preclude the Supreme Court from substituting its judgment for that of the trial court on factual issues. Thus, the facts and evidence found by the trial court supporting mutual mistake cannot be disturbed on appeal.

II. HOLDING SELLER LIABLE FOR RESCISSION DAMAGES IS A PROPER AWARD FOR MUTUAL MISTAKE.

The trial court did not hold the Appellants-Defendants

liable for warranting the vehicle, but merely stated that there was mutual mistake, and as such the contract should be rescinded. Rescission is the proper remedy for mutual mistake. Renner v. Kehl, 722 P.2d 262 (Arz. 1986). The trial court calculated rescission damages accordingly and Respondent-Plaintiff was still out the \$1,600.00 it costs to bring the automobile to the condition the parties thought it was in at the time of purchase.

Furthermore, the evidence shows that the Appellants-Defendants did indeed tell the Respondent-Plaintiff that he could return the vehicle to them if there were any defects later found. When Respondent-Plaintiff attempted to do so, Appellants-Defendants refused to make good their promise to correct such defect. Therefore the trial court very well could have required Appellants-Plaintiffs to warrant the value of the vehicle, as that is in fact, by their own testimony, what Appellants-Defendants did.


CONCLUSION

The Trial Court properly awarded judgment on behalf of Plaintiff for mutual mistake in this case since the parties were unaware of the true condition of the vehicle. It was the condition of the vehicle and not the value that was mistaken and the condition of the vehicle is a substantial part of the contract. Respondent-Plaintiff,

therefore, requests the Court of Appeals to uphold the judgment of the Trial Court and grant Respondent-Plaintiff his costs and legal fee for defending this action.

RESPECTFULLY SUBMITTED this 31st day of April, 1987.

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing BRIEF OF PLAINTIFF-RESPONDENT was mailed, postage prepaid, on the 29 day of April, 1987, to the following:

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