

1987

Steven P. and Melody Jackson v. Reed and Delores Hinckley : Brief of Respondent

Utah Court of Appeals

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BRIEF

UTAH
DEPARTMENT
OF
COURT

IN THE UTAH COURT OF APPEALS

.A10
DOCKET NO. 870042

STEVEN P. and MELODY
JACKSON,

Plaintiffs and
Respondents,

vs.

REED and DELORES HINCKLEY,

Defendants and
Appellants.

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BRIEF OF RESPONDENTS

Case No. 870042-CA

APPEAL FROM THE ORDER OF
THE FIFTH CIRCUIT COURT FOR THE COUNTY OF SALT LAKE
MURRAY DEPARTMENT
RANDY S. LUDLOW, JUDGE PRO TEM

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	i
STATEMENT OF ISSUES.....	ii
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
POINT I IT IS WITHIN THE COURT'S DISCRETION TO IMPOSE REASONABLE COSTS, SUCH AS WITNESS FEES AND MILEAGE AS A CONDITION OF GRANTING DEFENDANTS A CONTINUANCE.....	3
POINT II WHEN CONFLICTING EVIDENCE IS PRESENTED BEFORE THE COURT, IT IS THE DUTY OF THE TRIAL COURT TO ASSESS THE CREDIBILITY OF THE EVIDENCE AND ENTER FINDINGS OF FACTS.....	5
CONCLUSION.....	6

TABLE OF AUTHORITIES

CASES CITED

<u>Fisher v. Taylor</u> , 572 P.2d 393 (Utah 1977).....	5
<u>Peterson v. David</u> , 419 P.2d 138 (Wash. 1966).....	3
<u>Prince v. R.C. Tolman Construction Co., Inc.</u> , 610 P.2d 1267 (Utah 1980).....	5
<u>Romerell v. Zions First National Bank</u> , 611 P.2d 392 (Utah 1980).....	5
<u>Youngren v. John W. Lloyd Construction Co.</u> , 450 P.2d 985 (Utah 1969).....	4

STATUTES CITED

Rule 40(b) Utah Rules of Civil Procedure.....	ii, 3
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IN THE UTAH COURT OF APPEALS

STEVEN P. and MELODY JACKSON,	*	
	*	
Plaintiffs and	*	
Respondents,	*	
	*	
vs.	*	
	*	Case No. 870042-CA
REED and DELORES HINCKLEY,	*	
	*	
Defendants and	*	
Appellants.	*	
	*	

BRIEF OF RESPONDENTS

- - - - -

STATEMENT OF THE CASE

Plaintiffs, Steven P. and Melody Jackson commenced an action in the Small Claims Division of the Circuit Court of Salt Lake County, Murray Department and the matter was heard before Randy S. Ludlow, Judge Pro Tem on January 20, 1987. Plaintiffs sought the return of their deposit paid to defendants at the commencement of a lease agreement between plaintiffs (lessees) and defendants (lessors).

The court granted plaintiffs a judgment in the sum of \$355.75 against defendants. Defendants appeal from this judgment.

STATEMENT OF THE FACTS

Plaintiffs and defendants entered into a contract whereby plaintiffs leased a home from defendants. (Tr. at 2). At the commencement of the lease, plaintiffs paid to defendants the sum of \$425.00 as a security deposit and \$50 as a cleaning deposit.

(Tr.at 6). Plaintiffs resided in the home for approximately 2 1/2 years. (Tr. at 2).

Prior to vacating the home in August, 1986, plaintiffs gave notice to defendants of their intent to vacate. At the same time, plaintiffs inquired both in person and in writing of defendants as to any damages defendants thought should be repaired prior to plaintiffs vacating defendants' home. Defendants did not inform plaintiffs of any damages defendants thought had been done to their home. (Tr. at 9).

Furthermore, defendant Reed Hinckley worked with plaintiffs for three days on the repairs plaintiffs were making prior to vacating the home. During that time, plaintiffs asked defendant Reed Hinckley if there were any more repairs plaintiffs should make. Defendant Reed Hinckley replied "No, the place looks fine. You've done enough. I'm going to stay here and I think I'm going to try and rent it because it looks so nice. You've done a great job." (Tr. at 23).

Plaintiffs continued to ask defendant Reed Hinckley to let plaintiffs know of any other damages needing repairs. Defendant Reed Hinckley informed plaintiffs that he would let them know of any damages that needed repairs. (Tr. at 24). Plaintiffs were never informed of any damages done to the property until Defendants' letter of September 15, 1987.

SUMMARY OF ARGUMENTS

The judgment rendered in the Small Claims Court should be affirmed because it is within the discretion of the Small Claims Court to grant defendants' motion for a continuance subject to a

condition of paying witness fees and mileage. Defendants elected to continue with the trial when they refused to pay reasonable costs that would have been incurred by the opposing parties as the result of the continuance. As such, it is defendants' fault that the trial was not postponed.

When there is conflicting evidence presented before the court, it is the prerogative of the trial court to assess the credibility of the evidence and find the facts. The appellate court must give appropriate deference to the trial court's assessment of the facts of a case.

ARGUMENT

POINT I

IT IS WITHIN THE COURT'S DISCRETION TO IMPOSE REASONABLE COSTS, SUCH AS WITNESS FEES AND MILEAGE AS A CONDITION OF GRANTING DEFENDANTS A CONTINUANCE.

Rule 40(b) of the Utah Rules of Civil Procedure provides:

Upon motion of a party, the court may in its discretion, and upon such terms as may be just, including the payment of costs occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

First, it should be noted that the court in this case did not deny defendants' motion for a continuance. Rather the court granted the continuance subject to a condition of payment of witness fees of \$14 per witness and mileage at 30 cents per mile. (Tr. at 3). This procedure is well established in the courts. Peterson v. David, 419 P.2d 138, 139 (Wash. 1966).

Rule 40(b) of the Utah Rules of Civil Procedure clearly states that it is within the discretion of the court to impose

terms that are just when granting a continuance. These terms may include payment of costs that would result from postponement of the trial.

In interpreting Rule 40(b), the Utah Supreme Court has held that the decision of a trial court to impose terms as a condition to granting a continuance will be overturned by an appellate court only if there has been an abuse of discretion and the conditions imposed are unreasonable and unjust. Youngren v. John W. Lloyd Construction Co., 450 P.2d 985 (Utah 1969).

Applying the rule to this case, the Small Claims Court judge was acting within his authority when he requested that defendants pay witness fees plus mileage as a condition of granting defendants' request for a continuance. The rule clearly grants the court such authority.

Furthermore, the court's decision to demand from defendants \$14, which is the statutory witness fee, plus 30 cents per mile for each of the witnesses, was not unreasonable or unjust. The court stated its reasons for imposing the conditions. The plaintiffs had come to court on the date set for trial with their witnesses ready to proceed with the case.

The Utah Supreme Court has stated that where there has been ample notice to the parties involved and the plaintiffs and their witnesses had traveled a considerable distance and were in court ready to proceed, the trial court's decision to grant defendants' request for a continuance upon a condition that he pay \$200.00 was not unreasonable or unfair. Youngren, supra.

Furthermore, the court advised defendants that they should have called earlier to request a continuance. Even though the court had been closed for three days prior to the morning of the trial, the court said that defendants should have called the morning of the trial. (Tr. at 3).

Therefore, it is defendants' own fault that the continuance was ultimately denied. Defendants elected to continue with the trial instead of accepting the continuance. Under the circumstances shown, the court's decision to condition the granting of defendants' request for a continuance upon payment of the usual witness fees and mileage was neither unreasonable nor unjust.

POINT II

**WHEN CONFLICTING EVIDENCE IS PRESENTED BEFORE THE COURT,
IT IS THE DUTY OF THE TRIAL COURT TO ASSESS THE
CREDIBILITY OF THE EVIDENCE AND ENTER FINDINGS OF FACTS.**

The Utah Supreme Court has stated that it is the trial court's prerogative to judge the credibility of evidence in finding the facts. Prince v. R.C. Tolman Construction Co., Inc., 610 P.2d 1267 (Utah, 1980). Appellate courts simply are not in a position to evaluate and resolve conflicting testimony as accurately as a trial court. Romerell v. Zions First National Bank, 611 P.2d 392 (Utah, 1980).

The Utah Supreme Court has also stated that:

This court has consistently followed the well recognized standard of appellate review which precludes the substitution of our judgment for that of the trial court on issues of fact, and where its findings and judgments are based on substantial, competent, admissible evidence we will not disturb them. Fisher v. Taylor, 572 P.2d 393 (Utah, 1977).

In the present case, the court was simply exercising its prerogative to assess the credibility of conflicting evidence presented before it. Defendants presented their evidence and asserted that damage was done to their property by plaintiffs. Plaintiffs also presented their evidence and contended that there were no damages and that prior to vacating the property, defendants inspected the property and stated that "the place looks fine." (Tr. at 23). The court considered the conflicting evidence presented by the parties and found it in accordance with plaintiffs' claim. This is in accordance with the trial court's duty to find the facts and state its conclusions of law.

CONCLUSION

Defendants' contention that they were unjustly denied a continuance is without merit. Defendants were not denied a continuance. Rather defendants elected to continue with the trial because they refused to comply with the reasonable conditions imposed by the court upon the granting of a continuance. Both Rule 40(b) of the Utah Rules of Civil Procedure and precedent state that it is within the trial court's discretion to impose reasonable terms as a condition to granting a continuance.

Defendants have had their day in court. They have presented their evidence before the court, the court has assessed this evidence and has found in favor of the plaintiffs.

Plaintiffs respectfully ask this court to affirm the decision of the lower court and dismiss defendants' appeal.

DATED this 6TH day of July, 1987.

Respectfully submitted,

Bruce Plenk by Martha Sience
BY: BRUCE PLENK
Attorney for Respondents

CERTIFICATE OF MAILING

I hereby certify that on the 6TH day of July, 1987,
I mailed four (4) true and correct copies of the foregoing BRIEF
OF RESPONDENTS to Matthew N. Olsen, Olsen & Olsen, Attorney for
Appellants, 8138 South State Street, Midvale, Utah 84047, postage
prepaid thereon.

Matthew Olsen

bp/jackson.bri