

1987

# Hood v. Layton : Brief of Appellant

Utah Court of Appeals

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Constable Suzanne Hood; Pro Se.

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 870058-CA

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IN THE UTAH COURT OF APPEALS

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CONSTABLE SUZANNE HOOD,	)	
	)	
Plaintiff/Respondent,	)	Case No. 870058-CA
	)	
v.	)	
	)	
CHARLES V. LAYTON,	)	
	)	
Defendant/Appellant.	)	

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APPELLANT'S BRIEF

---

AN APPEAL FROM A FINAL JUDGMENT OF AN ACTION BEFORE  
THE SMALL CLAIMS DEPARTMENT, FIFTH CIRCUIT COURT,  
SALT LAKE CIRCUIT WHICH WAS RENDERED ON  
JANUARY 29, 1987, BY A JUDGE PRO TEMPORE PRESIDING

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**MAY 08 1987**

**Court of Appeals**

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## APPLICABLE STATUTES AND RULES

### §78-6-3(2)

Not later than two days before the date of trial regarding the original affidavit, the defendant may upon the payment of the fee prepare a counteraffidavit as set forth in §78-6-2.5, or at his request the judge or justice or clerk of the court shall draft the counteraffidavit for him.

### §78-6-10

(1) The judgment of the small claims department of the justices' and circuit court is conclusive upon the plaintiff unless a counterclaim has been interposed.

(2) If the matter is heard in the small claims department of the circuit court, the defendant may appeal the judgment of the circuit court to the Court of Appeals by filing a notice of appeal within five days of the entry of the judgment against him.

(3) If the matter is heard in the small claims department of the justices' court, the defendant may obtain a trial de novo in the circuit court by filing in the circuit court of the county a petition for trial de novo within five days of the entry of the judgment against him.

### §78-27-38

The fault of a person seeking recovery shall not alone bar recovery by that person. He may recover from any defendant or group of defendants whose fault exceeds his own. However, no defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributable to that defendant.

### U.R.C.P. 13

(k) Claim in excess of court's jurisdiction. Where any counterclaim or cross-claim or third-party claim is filed in an action in a city court or justice's court, and due to its limited jurisdiction, such court does not have the power to grant the relief sought thereby, it shall suspend all proceedings in the entire action and certify the same and transmit all papers therein to the district court of the county in which such inferior court is maintained, upon the payment by the party filing such counterclaim, cross-claim or third-party claim of the fees required for certifying the record on appeal from such court and for docketing the same in the district court. The fees herein

required to be paid, shall be deposited with the clerk of the inferior court at the time of filing such counterclaim, cross-claim, or third-party claim. For failure so to do, the court may, upon motion of the adverse party, after notice, strike such counterclaim, cross-claim, or third-party claim.

U.R.C.P. 19

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. If a person as described in Subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. This rule is subject to the provisions of Rule 23.

(Amended, effective Jan. 1, 1987.)

U.R.C.P. 52

(A) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon . . .

#### DESCRIPTION OF PROCEEDINGS BELOW

This action was commenced in Salt Lake County Circuit Court, Small Claims Division, Salt Lake Department and tried before a judge pro tempore on January 29, 1987 and final judgment entered on January 31, 1987. This Court has jurisdiction to hear this appeal pursuant to §78-6-10(2) U.C.A. (amended 1986).

#### STATEMENT OF THE ISSUES PRESENTED ON APPEAL

This Court is being asked to consider the following issues on appeal:

1. Whether the competent and relevant evidence adduced at trial was sufficient to sustain a judgment in favor of Plaintiff.

2. Whether trial court erred in failing to grant Defendant's Motion to Dismiss without prejudice based upon Rule 19, Utah Rules of Civil Procedure.

3. Whether trial court erred in failing to apply the provisions of §78-27-38 U.C.A. (as amended) in determining damages or determining value of damages.

4. Whether the trial court's failure to make findings of fact and conclusions of law to establish the basis of judgment and upon what finding relief was granted requires reversal.

#### STATEMENT OF THE CASE

Plaintiff Hood brought an action in Small Claims Court, Salt Lake Department Circuit Court seeking compensation from Defendant Layton for property damage done to Hood's automobile as

the result of a collision. Layton sought dismissal without prejudice to seek joinder of Jean Pahl, who was the driver of Hood's vehicle, and to remove the matter to the Circuit Court by counterclaiming or cross-claiming in accordance with Rule 13(k), Utah Rules of Civil Procedure. The court denied the motion and trial was had on January 29, 1987, and judgment was granted in favor of Plaintiff.

#### STATEMENT OF THE FACTS

On August 27, 1986, Charles V. Layton and immediate family members traveled to the residence of his ex-wife, Jean Pahl, to recover Mr. Layton's boat then in the possession of Ms. Pahl. During the course of recovery, Layton and his brother each drove separate vehicles into the parking lot where the boat was located. Layton attached the boat to his truck and commenced to exit the lot preceded by his brother when Jean Pahl appeared in a 1973 Toyota Corolla owned by her sister Suzanne Hood and blocked the driveway.

Following a curt discussion between Layton's brother and Pahl, the Hood vehicle backed up to allow passage. While Layton followed his brother one or more collisions occurred involving his truck and the Hood auto. Each party asserted at trial that the collision was intentionally caused by the other driver.

Layton was prosecuted by Salt Lake County Attorney on behalf of the State of Utah for violation of 76-6-106 U.C.A.

(as amended) for Criminal Mischief, a Third Degree Felony due to damage in excess of \$1,000.00. The matter was reduced to a Class A misdemeanor at preliminary hearing, and ultimately dismissed upon joint motion of the parties.<sup>/1</sup>

Hood filed this action on January 9, 1987 and Layton was served on the evening of January 22, 1987. Upon receiving copy of the served affidavit and in order to preserve any actions since the time for counterclaim by Defendant under §78-6-3(2) U.C.A. (amended 1986) had expired, counsel filed a notice of intent to counterclaim in excess of jurisdictional amount as well as a motion to dismiss the affidavit without prejudice since Hood had not named Pahl as a party. The motion was denied and trial proceeded.

At trial clearly inadmissible hearsay was admitted, as well as other conjectural, speculative and irrelevant evidence. Undisputed, however, was the fact that Layton's brother preceded him out of the lot and that Pahl initially had driven Hood's car to a position blocking the driveway exit. Pahl backed up to allow passage of the first vehicle and the collision occurred thereafter.

1/ The motion was not due to failure of witnesses to appear or lack of evidence, as indicated at trial in this matter, but based upon statements of witnesses not appearing at this trial.

At the close of the case, the judge pro tempore found for the Plaintiff, but did not relate the evidence upon which he relied on the legal basis for such relation.

SUMMARY OF THE ARGUMENT

The trial below failed to produce sufficient competent and relevant evidence to sustain the Plaintiff's burden of proof, therefore the judgment is in error.

The trial court erred in proceeding without directing the joinder of an indispensable party under Rule 19, U.R.C.P., and in its assessment of damages.

Following the conclusion of trial, the court failed to properly make specific findings of fact and conclusions of law in contravention of the requirements of Rule 52, U.R.C.P.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING JUDGMENT  
FOR PLAINTIFF BASED UPON THE EVIDENCE

As a threshold question, this Court should first examine whether the evidence adduced at trial was sufficient to sustain a judgment in favor of Plaintiff.<sup>/2</sup> Appellant herein asserts that taken in the light most favorable to the prevailing party, the total evidence is, at best, a wash and fails to sustain Plaintiff's burden of proof.

<sup>2/</sup> Generally, the court should view with some incredulity the issue of insufficiency of evidence in a small claims action. However, the underlying procedural defects presently existing in the process, and later discussed herein, create the notion that this issue is at least symptomatic and therefore should be reviewed.

Initially it could be argued that there is no appropriate standard to apply since this judgment stands absent any formal finding of fact in support. Otherwise, such findings should be scrutinized in a light most favorable to the prevailing party and with deference to the proximity of the fact-finder below. Scharf v. BMG Corp., 700 P.2d 1068 (1985); Sharpe v. American Medical Systems, Inc., 671 P.2d 185 (1983).

However, a generic approach would still contemplate the axiom that judgments supported by clear, satisfactory, and convincing proof cannot be disturbed on appeal. Lynch v. MacDonald, 367 P.2d 464, 12 U.2d 427 (1962). In that case, the Utah Supreme Court said that where a case is decided at least in part upon conflicting evidence, the view of that evidence taken by the trial court should be favored.

Unfortunately in this case, it is impossible to determine which evidence the trial court favored. Each of the parties testified, along with their respective witnesses, and often in cacophonous unison. During the course of those testimonies, clearly irrelevant and/or inadmissible statements were proffered.<sup>/3</sup>

3/ As encouraged by the instruction on the form pleadings, neither party appeared with counsel. The apparent burden regarding questions of evidence obviously shifts to the trial court.

While we cannot speculate what the court's ruling might have been on specific objections, we can postulate that no evidence at trial was so weighty as to satisfy the Plaintiff's burden, which

"requires that the evidence be such that reasonable minds acting fairly thereon could believe that the existence of the fact is more probable or more likely than its non-existence, so that a person of ordinary prudence could believe the fact with sufficient assurance to act upon it in relation to matters of serious concern in his own affairs."

Morris v. Farmers Home  
Mutual Insurance Co.,  
500 P.2d 505, 507; 28  
U.2d 206 (1972)

Whatever we have in this case, we clearly do not have that level of proof so as to affirm the judgment of the trial court, as so the judgment should be reversed.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT  
THE MOTION TO DISMISS UNDER RULE 19

A portion of the error in this case can be attributed to the recent amendment to §78-6-1 et seq. U.C.A. (amended 1986) to small claims actions and appeals from judgment therefrom, which were made effective a short time prior to the instigation of this action. That portion of the code likewise does not provide for third-party action otherwise permitted by Rule 14, Utah Rules of Civil Procedure.

In the instant action, Layton was sued by Hood for property damage incurred as a result of an auto collision although Hood was not the driver. Layton desired a third-party

action against the driver of Hood's car, which is not contemplated within the Small Claims Court Act. Knowing that the amount in controversy would exceed \$1,000.00, Defendant filed a notice of intention to file such claim pursuant to Rule 13(k), Utah Rules of Civil Procedure so as to preserve any claims against those parties under that rule.<sup>4</sup>

The driver of Plaintiff's vehicle was not a party at that time, and a motion to dismiss under Rule 19, Utah Rules of Civil Procedure (as amended) was filed in order to permit the suit to be reinstituted in the Circuit Court.

Defendant asserts that failure to grant the Rule 19 motion was error because it adversely affected the full and fair determination of rights of the parties to the lawsuit. Cowen and Co. v. Atlas Stock Transfer Co., 695 P.2d 109 (1984). For that reason the driver, Jean Pahl, was a necessary party. Johnson v. Utah State Retirement Office, 621 P.2d 1234 (1980).

### III. THE TRIAL COURT ERRED IN ASSESSMENT OF DAMAGES

The Utah Comparative Negligence Statute §78-27-38 U.C.A. (as amended), provides:

"The fault of a person seeking recovery shall not alone bar recovery by that person. He may recover from any defendant or group of defendants whose fault exceeds his own. However, no defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributable to that defendant.

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<sup>4/</sup> This precautionary measure appears to be unnecessary in light of the Utah Supreme Court's ruling in Faux v. Mickelsen, 725 P.2d 1372 (1986).

The Appellant herein asserts that if the award of the court was based upon the negligent operation of a vehicle, that award should be reduced accordingly due to Hood's own negligence in allowing her sister to operate Hood's vehicle while in such an apparently agitated and irrational state.

The Defendant further asserts that there is no competent evidence to demonstrate the extent of damage to Hood's 1973 Toyota Corolla which would substantiate an award of \$1,000.00.

IV. WHETHER THE TRIAL COURT'S FAILURE TO MAKE  
SPECIFIC FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REQUIRES REVERSAL

Rule 52(a) of the Utah Rules of Civil Procedure clearly states:

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts separately and state separately its conclusions of law thereon, . . .

This rule is unconditional, and subject only to the waiver provisions of subsection (c) which do not apply in this case.

It has been long held that failure of the trial court to make findings of fact on all material issues is reversible error where it is prejudicial. Kinkella v. Baugh, 660 P.2d 233 (1983); Romrell v. Zions First National Bank, N.A., 611 P.2d 392 (1980); Gaddis Investment Co. v. Morrison, 278 P.2d 284, 3 U.2d 43 (1954); Pike v. Clark, 79 P.2d 1010, 95 U. 235 (1938).

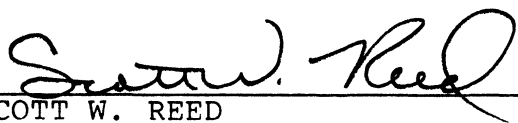
When our inspired Legislature ordained the transition of small claims court in the Circuit Courts system, the ramifications were unjustly ignored. From a convenient and facilitating forum for simple dispute resolution, it now exists as the most recent venue in a morass of courts impossible to be utilized or understood by the common person.

As an aside, but of some significance to the Appellant in this case, is the curiosity that when the amendment of §78-6-10 U.C.A. (amended 1986) was effected, the heading left in the term "Attorney's fee" but the body is void of any reference to entitlement by either party. Appellant asserts his entitlement to attorney fees in this matter and herein prays for that relief.

#### CONCLUSION

In summary, the entire purpose of small claims court has been defeated by this new legislation. The Appellant requests and this Court is compelled to remand this and similar matters to the court below for further proceeding, until such time as the procedures are consistent with the purpose.

DATED this 8 day of May, 1987.

  
SCOTT W. REED  
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8 day of May, 1987, a true and correct copy of the foregoing was mailed, with postage prepaid fully thereon, to Constable Suzanne Hood, 219 "J" Street, Salt Lake City, Utah 84103.

Scott Reed