

1987

# John Gallacher v. American University of Skin Care and Jalaine Hansen : Brief of Appellant

Utah Court of Appeals

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# BRIEF

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DOCKET NO.

870111 IN

IN THE UTAH COURT OF APPEALS

[illegible]

Plaintiff and Respondent,

AMERICAN UNIVERSITY OF SKIN  
CARE AND JALAIN HANSEN,

Case No. 870111-CA

Defendants and Appellants, :

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Honorable John Backlund

Attorneys for Appellants

Attorney pro se

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Case No. 870111-CA

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Date 7-2-87



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Table of Contents with page references.



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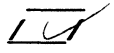
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Statement of the case (optional with respondent's and reply brief)



Summary of the argument.



Argument



Conclusion



Addendum (optional with respondent's and reply brief).



Length

Appellant/Respondent--50 pages, not including addendum.

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Petition for Rehearing--15 pages, not including addendum.



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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

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JOHN GALLACHER,	:	
	:	
Plaintiff and Respondent,	:	
	:	
vs.	:	
	:	
AMERICAN UNIVERSITY OF SKIN	:	Case No. 870111-CA
CARE AND JALAIN HANSEN,	:	
	:	
Defendants and Appellants,	:	

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BRIEF OF APPELLANTS

---oooOooo---

JURISDICTIONAL STATEMENT

This is an appeal of a small claims judgment rendered in the Eighth Circuit Court, Orem Department. The action in the Small Claims Court was commenced by the father of a student at the school run by Defendants for a refund of tuition and other fees paid. The Court ordered a refund in the amount of \$800.00. Jurisdiction is conveyed on this Court to hear appeals by Defendant from actions filed in a Small Claims Court by Section 78-6-10(2) U.C.A.

STATEMENT OF ISSUES

The issues presented in this appeal are as follows:

(a) Whether the Plaintiff in this action has any standing to take legal action against Defendants and, if so, may he assert



a defense to a contract in behalf of his daughter, now over 18 and able to bring her own action.

(b) Whether the contract made between Defendants and Sandie Gallacher, the daughter of Plaintiff herein, is voidable, as found by the Court below, because it was entered into by a minor.

#### STATUTORY PROVISIONS RELIED UPON

The following Statutory Provisions of the Utah Code and rules of Civil Procedure will be relied upon by Defendants in support of their arguments:

##### 15-2-1 U.C.A. Period of Minority

The period of minority extends in males and females to the age of eighteen years; but all minors obtain their majority by marriage. It is further provided that courts in divorce actions may order support to age 21.

##### 15-2-2 U.C.A. Liability for Necessaries and on Contracts - Disaffirmance.

A minor is bound not only for reasonable value of necessaries but also by his contracts, unless he disaffirms them before or within a reasonable time after he attains his majority and restores to the other party all money or property received by him by virtue of said contracts and remaining within his control at any time after attaining his majority.

##### 15-2-3 U.C.A. Limitation on Right to Disaffirm.

No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority or from his having engaged in business as adult, the other party had good reason to believe the minor capable of contracting.

#### Rule 17 U.R.C.P.:

##### (a) Real Party in Interest.

Every action shall be prosecuted in the name of the real party in interest. An executor,

administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons.

When an infant or an insane or incompetent person is a party, he must appear either by his general guardian, or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be an infant or an incompetent person.

STATEMENT OF CASE

Defendant American University of Skin Care is a Utah Corporation which operates a school of cosmetology in the State of Utah. Defendant Jalaine Hansen is not an officer or director of the corporation, but is responsible for the day to day activities of the school. Sandie Gallacher signed an agreement with the school for the purpose of obtaining certain educational classes from the school on January 8, 1987. Classes were to

commence, and did commence, on January 13, 1987, the date of her 18th birthday. No consideration for the contract was given on January 8th, but Sandie Gallacher paid to Defendants a check for \$800.00, signed by her father, on the the 13th, the date of her birthday, and the date of the beginning of class. On that date, she was asked to, and did, initial the contract indicating her continued assent to the contract provisions, and in particular to the added provision that there would be no refunds for this particular type of class. Sandie commenced schooling as scheduled, and continued such schooling for two to three weeks. Thereafter, she became disenchanted, and dropped out. A demand for a refund was made by Sandie's father, the Plaintiff in this action, citing various reasons which may have constituted failure of consideration or fraud, and was denied the refund, based upon the initial contract. Legal action was taken in the Small Claims Court for the full refund at which time various allegations were discussed. The Court made no ruling in reference to any other claim made by Plaintiff, but ruled that the contract was made prior to Sandie's 18th birthday, and was voidable by Sandie. The Court therefore ordered a full refund of the amount paid under the contract. Sandie had received a "kit" consisting of certain items needed to complete the course. The Court, apparently relying upon the statutes cited above, ordered the kit returned to Defendants.

## SUMMARY OF ARGUMENTS

Defendants make two specific arguments to the Court in support of their prayer to reverse the lower court and remand for further hearing. First, Defendants allege that John Gallacher was not a party to the contract and that he may therefore not be a party to this legal action; or that if he is, he may not assert his daughter's minority as a defense to the contract.

Defendants secondly ask this Court to rule that the lower court erred in finding that the agreement signed by Sandie Gallacher was in fact a contract signed before her eighteenth birthday and therefore subject to being voided by the Court in the action. Defendants contend that the contract was actually entered into at the time the money was paid and schooling was commenced. If the contract was actually entered into prior to that time, the actions of Sandie Gallacher after her eighteenth birthday were a ratification of the contract, taking it outside of the action of the statute allowing voidability.

## ARGUMENT

I. PLAINTIFF IN THIS ACTION IS NOT A PARTY TO THE CONTRACT AT ISSUE AND HAS NO STANDING TO BRING THIS ACTION. IF PLAINTIFF IS A PROPER PARTY, HE MAY NOT ASSERT MINORITY AS A CONTRACTUAL DEFENSE, AS HE IS CLEARLY NOT A MINOR.

Rule 17 U.R.C.P. as cited above, states that the real party and interest should be a party to a legal action. If that person is a minor, the court is to appoint a guardian ad litem to

represent the interests of that person. In this particular case, a contract was entered into by a person who was, at the time of the original signing, a minor. Almost immediately thereafter, however, that person achieved her majority. She no longer needs a guardian ad litem to protect her, and indeed must be a party to this action if relief is to be granted. The reason, apparently, she has not been made a party is that her father gave her the money, and it is him who wants his money back. That does not give him standing to enter into this legal action instead of his daughter. His agreement was with her, not Defendants. The Utah Supreme Court, in Terracor v. Utah Board of State Lands and Forestry, 716 P.2d 796 (Utah 1986) stated that "...this court will not lightly dispense with the requirement that a litigant have a personal stake in the outcome of a specific dispute." The court there went on to say, in discussing standards of standing to litigate:

The premises upon which these standards have been constructed is that issues should generally be litigated by those parties with the most direct interest in resolution of those issues, ... 716 P. 2d 796.

The issue here is whether or not the contract, to which Plaintiff was not a party, is voidable by a minor. This Plaintiff has no interest whatsoever in the resolution of that issue. Plaintiff is not a minor, and was not a minor for some time prior to the contract. Plaintiff has no legal right to

benefit from the provisions of the law regarding a minor's right to void a contract. In the case of Clark v. American Standard Inc., 583 P.2d 618 (Utah 1978), the court ruled that a corporate officer who had signed a contract in behalf of a corporation did not have standing to enforce that contract. The case was remanded to the district court for a determination as to whether the plaintiff could have qualified as a third party beneficiary, with some interest in enforcing the contract. In doing so, the Supreme Court asked the Trial Court to make a determination of whether the plaintiff was an "intended beneficiary" of the contract at the time the contract was made, by both parties to the contract. Clearly, the fact that Sandie's father may have given her the money for her schooling does not give rise to any duty in Defendants to the father. Clearly he is not a party to the contract, and clearly he is not a beneficiary.

II. THE CONTRACT BETWEEN SANDIE GALLACHER AND DEFENDANTS WAS NOT VOIDABLE UNDER STATUTE BECAUSE OF HER MINORITY.

Admittedly, Sandie Gallacher, at the time she originally signed her schooling agreement with Defendants was under the age of 18 years. She had no capacity to contract, outside narrow exceptions. Defendants do not claim that this contract falls within those exceptions. This contract, however, provided for the payment of an \$800.00 tuition fee, (including a registration fee and a fee for materials) by Sandie Gallacher and the

provision of certain educational services by Defendants. The contract, by its terms, was to commence on January 13, 1986, Sandie's 18th birthday. On her 18th birthday, Sandie returned to Defendant's place of business with her check. She was told at that time if she intended to go through with the contract that she would have to agree to a no refund policy, due to particular circumstances of the services which would be provided. She was asked to initial the contract again, where the alteration had been made on that date, indicating her assent to the additional term. She did so, and paid the money at that time. On that date, she commenced her schooling. She continued her schooling for a period of two or three weeks, before deciding that it was not what she wanted, and dropping out. It is the contention of Defendants that the contract was actually made on her 18th birthday, and was not voidable based on minority. On that date, Sandie paid the money and started the schooling. It should be from that date that the contract be deemed effective.

Utah Case Law on this point is basically non-existent. The Court of Appeals of the State of Colorado, however, in Jones v. Dressell, 586 P.2d 1057 (Colo. App. 1978) made the following statement:

It is well settled in Colorado that a contract entered into by a minor is not void but only voidable by the minor. Affirmance is not merely a matter of intent; it may be determined by the actions of a minor who accepts the benefits of a contract after reaching the age of majority, or by his silence or acquiescence in the

contract for a considerable length of time.

Thus, on reaching the age of eighteen plaintiff was required either to disaffirm the contract within a reasonable time, or be bound thereby. And, the undisputed facts established that, after turning eighteen, plaintiff did not only disaffirm the contract, but instead ratified it by accepting the benefits thereof. Hence, his being a minor when he entered the contract is without significance as to its present enforceability against him. (Citations omitted) 582 P.2d at 1058.

That case was later affirmed by the Supreme Court of Colorado in Jones v. Dressell, 623 P.2d 370 (Colo. 1981) in affirming the judgment of the Court of Appeals, the Supreme Court added:

We agree that what constitutes a reasonable time for affirmance or disaffirmance is ordinarily a question of fact to be determined by the facts in a particular case. We conclude, however, that the trial court properly determined that Jones ratified the contract, as a matter of law, by accepting the benefits of the contract when he used Free Flight's facilities on October 19, 1974.

Thus, since Jones ratified the contract, the factual issues of whether his suit for personal injuries was filed within a reasonable time after attaining his majority and constituted disaffirmance of the contract, is not relevant. Accordingly, the entry of summary judgment on the issue of ratification was not error. 623 P.2d at 374.

Whatever time the contract was entered, it is clear that Sandie Gallacher ratified the contract after the date of her eighteenth birthday. She paid the money at that time, she commenced study at that time, and continued study for a substantial period of time after her eighteenth birthday. Upon



deciding that she did not like the school, she cannot run back to the time before the contract, and claim she was too young to enter into it.


#### CONCLUSION

Defendants ask the Court to rule that the lower court herein was in error in its ruling that the contract entered into between Sandie Gallacher and American University of Skin Care was voidable. If it was voidable, it cannot be voided by her father, a person who has no interest in such voidability.

Upon such a ruling, Plaintiff's action should be dismissed. As an alternative to dismissal, the matter should be remanded to the Trial Court for further hearing on other issues not ruled upon by that court.

DATED this 1st day of July, 1987.

MCCULLOUGH, JONES, JENSEN & IVINS

  
\_\_\_\_\_  
W. Andrew McCullough  
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of <sup>July</sup>~~June~~, 1987, I did mail <sup>4</sup>~~two~~ true and correct copies of the above and foregoing Request for Production of Documents, postage prepaid, to John Gallacher, Attorney pro se, 1510 North 230 East, Logan, Utah 84321.

C. Charles McCallister