

1996

Intermountain Health Care, Inc. a Utah
Corporation, dba Credit Assurance Agency v.
Thomas and Maria Smith : Brief of Appellant

Utah Court of Appeals

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Thomas Smith; For the Defendant-Appellant.

Lawrence R. Peterson; For the Plaintiff-Appellee.

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JURISDICTION

This Court has jurisdiction pursuant to Utah Code Section 78-2a-3.

STATEMENT OF THE CASE

This matter came about as a result of defendant Maria Smith's authorization of elective medical treatment for Kevin Smith, a minor son of defendant/appellants.

Defendant/appellant Thomas Smith did not authorize such treatment nor did defendant/appellant Thomas Smith sign any permission forms.

Defendant/appellant Thomas Smith filed and properly served a counterclaim against plaintiff. Plaintiff did not respond to said counterclaim within the time required by law. At this time plaintiff has not now nor has plaintiff ever responded to defendant/appellant Thomas Smith's counterclaim. Defendant/appellant Thomas Smith filed a motion for default judgement against plaintiff and the judge in the matter refused to grant said motion. Defendant/appellant Thomas Smith believes that pursuant to Rule 55 Utah Rules of Civil Procedure he is entitled to default judgement.

ISSUES FOR REVIEW AND STANDARD OF REVIEW

1. Can a person be held liable on an instrument the person has not signed?

Utah Code 70A-3-401(1) A person is not liable on an instrument unless (a) the person signed the instrument. The standard of review is determined by the cited Utah statute.

2. Can a husband be held liable for his wife's debts? Utah Code 30-2-5 provides (1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other. The standard of review is determined by the cited Utah statute.

3. Can a wife execute contracts in her name? Utah Code 30-2-2 provides that contracts may be made by a wife and liabilities incurred and enforced by or against her, to the same extent and in the same manner as if she were unmarried. The standard of review is determined by the cited Utah statute.

4. When a properly executed and properly served counterclaim is not answered within the prescribed time is the counterclaimant entitled to default judgement on his counterclaim? The standard of review is determined by Rule 55 Utah Rules of Civil Procedure.

Defendant/appellant can not find any determinative law or decisions from the Appeals Court, the Supreme Court or the 10th Circuit on the issues raised in this matter and has therefore determined that this is a case of first impression.

ARGUMENT

Title 42 U.S.C. §1986 requires that any citizen having knowledge that another citizen's rights are about to be violated, and having the power to prevent or aid in preventing the commission of same, refuses or neglects to so do, if such wrongful act be committed, shall be liable to the citizen injured, for all damages caused by such wrongful act, which such citizen by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of citizens guilty of such wrongful neglect or refusal may be joined as defendant/appellants in the action.

This statute places on ever citizen of this nation a duty to act to protect

another citizen from the violation of that citizen's constitutional and civil rights. This duty includes every judge, attorney, police officer. Especially, judges and attorneys, because of their superior training in law.

I

In the instant matter the trial court judge neglected or refused to protect defendant/appellant Thomas Smith's right to due process and equal protection of the law. Thus, defendant/appellant Thomas Smith believes that due means just, proper, reasonable; process means, a series of actions, motions, or occurrences whereby a result or effect is produced; equal means, alike; uniform; the word equal implies not identity but duality and the use of one thing as the measure of another.

Rule 12(a) Utah Rules of Civil Procedure requires that an answer or other pleading be made within 20 days of service upon the defendant excluding the day of service. Rule 55, Utah Rules of Civil Procedure entitles the plaintiff to default judgement in the event Rule 12(a) is not complied with.

In the case at bar the record establishes that the counterclaim was properly served and that the plaintiff/appellee did not answer within the time required by Rule 12(a). In fact plaintiff/appellee does not respond to defendant/appellant Thomas Smith's pleadings at all.

This Court ordered both parties to respond with briefs regarding summary disposition by November 29, 1996. The defendant/appellant timely responded. The plaintiff/appellee did not respond. Yet this court ignored the plaintiff/appellees lack of response and denied the defendant/appellant's brief. In this matter

defendant/appellant was and is entitled to summary reversal of the lower court's decision and the award of default judgement on the basis of the appellees neglect or refusal to respond. The record is clear the appellee does not think that this matter is important enough to even respond, yet this Court neglected or refused to act to protect defendant/appellant's right to due process and equal protection of the law.

There was no protest or objection by the appellee to the granting of the motion for summary reversal, yet this Court neglected and refused to grant same. In this matter this Court as well as the trial court, violated 42 U.S.C. §1986 and defendant/appellant was and is injured by:

- a Knowledge of the law This Court is trained and has knowledge of the law with respect to this Court's duty to protect defendant/appellant's constitutional and civil rights (42 U S C §1986)
- b Discovery of the law This Court has knowledge and the ability to conduct discovery of the law to determine this Court's responsibilities with respect to the protection of defendant/appellant's constitutional and civil rights (Utah R Civ P Rule 26(e))
- c Constructive Fraud This Court has knowledge of and/or the ability to discover this Court's duty to protect or aid in protecting defendant/appellant's constitutional and civil rights and possessing such knowledge committed an act of omission (this Court neglected to protect defendant/appellant's constitutional and civil rights) contrary to such legal duty, trust or confidence
Such act being contrary to good conscience and operated to the injury of

the defendant/appellant. (Utah. R. Civ. P. 9(b), 42 U.S.C. §1986).

- d. Neglect. This Court having knowledge of this Court's duty, pursuant to Title 42 United States Code Section 1986, and this Court having knowledge that defendant/appellant's rights were about to be violated, and having the power to prevent or aid in preventing the wrong, was required to so act. §1986 further provides that this Court, by neglecting or refusing to act has no sovereign immunity, and the Defendant/appellant being injured, and this Court by refusing or neglecting to act, is liable to the defendant/appellant for such damages as are suffered.

Therefore, as a matter of law defendant/appellant Thomas Smith was and is entitled to default judgement against appellee.

II

Defendant/appellant Thomas Smith has no contract pursuant to Utah Code §70A-3-501 which makes defendant/appellant liable to plaintiff/appellee for any amount and plaintiff/appellee has provided no such contract. Utah Code §70A-3-401(1) provides "A person is not liable on an instrument unless: (a) the person signed the instrument." Plaintiff has not produced any documents, contracts, or forms containing defendant/appellant Thomas Smith's signature. Plaintiff may argue that pursuant to Utah Code §70A-3-401(1)(b) defendant/appellant Thomas Smith was represented by defendant Maria Smith. Defendant/appellant Thomas Smith denies that defendant Maria Smith was acting as defendant/appellant Thomas Smith's agent.

At all times relevant to this matter defendant Maria Smith acted on her own. All forms were signed by defendant Maria Smith pursuant to her right to contract under Utah Code § 30-2-2. Wherefore, defendant/appellant Thomas Smith can in no wise be held liable for expenses incurred by, and contracts entered into and expenses agreed to by defendant Maria Smith.

CONCLUSION

Defendant/appellant has shown that defendant/appellant has no contract with plaintiff/appellee and therefore is not liable to plaintiff/appellee for any sum of dollars. Defendant/appellant has established that a proper counterclaim was properly served on the plaintiff/appellee and that plaintiff/appellee did not respond in any manner. Therefore as a matter of law defendant/appellant is entitled to default judgement. Defendant/appellant has shown that defendant Maria Smith acted on her own and without the permission of defendant/appellant Thomas Smith. Defendant/appellant has further shown that both the trial court and this Court have neglected or refused to protect the constitutional and civil rights of defendant/appellant Thomas Smith, therefore, both courts are individually liable for all damages suffered by defendant/appellant Thomas Smith.

Wherefore, defendant/appellant requests the Court to reverse the default judgement granted against defendant/appellant Thomas Smith and order the trial court to grant default judgement on defendant/appellant Thomas Smith's counterclaim.

Dated January 31, 1997


Thomas Smith

CERTIFICATE OF SERVICE

I certify that I have caused to be served by First Class United States Mail a true and correct copy of the attached defendant/appellant's brief on Plaintiff's attorney:

Lawrence R. Peterson
Attorney for Plaintiff
4516 South 700 East, Suite 210
Salt Lake City, Utah 84107

Dated: January 31, 1997



Thomas Smith