

2000

Housing Authority of the County of Salt Lake v. John Thomas Snyder : Amicus Brief

Utah Supreme Court

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Brian M. Barnard; James L. Harris, Jr.; Utah Legal Clinic; Attorneys for Defendant/Appellant;
Kimberly D. Washburn; Stirba and Hathaway; Attorney for Plaintiff/Appellee.

Utah Legal Services, Inc; By Bruce Plenk; Attorneys for Amicus Crossroads Urban Center.

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IN THE UTAH SUPREME COURT

HOUSING AUTHORITY OF THE
COUNTY OF SALT LAKE,

Plaintiff/Appellee

: BRIEF OF AMICUS CURIAE
CROSSROADS URBAN CENTER

:

vs.

:

Case No. 20000591
District Court Case No. 00-201-0956

JOHN THOMAS SNYDER,

:

Priority No. 15

Defendant/Appellant.

:

APPEAL FROM A JUDGMENT ENTERED BY THE THIRD DISTRICT
COURT, SALT LAKE COUNTY, MURRAY DEPARTMENT,
Hon. Michael K. Burton

UTAH LEGAL SERVICES, INC
By Bruce Plenk, #2613
16 East 13th St.
Lawrence, KS 66044
Tel: 785 840-0077
Attorneys for Amicus Crossroads Urban
Center

BRIAN M. BARNARD USB # 0215
JAMES L. HARRIS, JR. USB # 8204
UTAH LEGAL CLINIC
Attorneys for Defendant/Appellant
214 East Fifth South Street
Salt Lake City, Utah 84111-3204
Telephone: (801) 328-9531

KIMBERLY D. WASHBURN
STIRBA & HATHAWAY
Attorneys for Plaintiff/Appellee
PO Box 810
Salt Lake City, Utah 84110-0810
Telephone: (801) 364-8300

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PAT BARTHOLOMEW
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IN THE UTAH SUPREME COURT

**HOUSING AUTHORITY OF THE
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16 East 13th St.
Lawrence, KS 66044
Tel: 785 840-0077
Attorneys for Amicus Crossroads Urban
Center

BRIAN M. BARNARD USB # 0215
JAMES L. HARRIS, JR. USB # 8204
UTAH LEGAL CLINIC
Attorneys for Defendant/Appellant
214 East Fifth South Street
Salt Lake City, Utah 84111-3204
Telephone: (801) 328-9531

KIMBERLY D. WASHBURN
STIRBA & HATHAWAY
Attorneys for Plaintiff/Appellee
PO Box 810
Salt Lake City, Utah 84110-0810
Telephone: (801) 364-8300

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PRIOR OR RELATED APPEALS

This Court previously denied a Petition for Extraordinary Writ in this matter in Case No. 20000322 SC. That petition sought a stay of the trial date and an order allowing Snyder to conduct discovery.

STATEMENT OF JURISDICTION

This Court has jurisdiction of this matter pursuant to Utah Code § 78-2-2 (3)(j).

ISSUE PRESENTED FOR REVIEW BY APPELLANT ON WHICH AMICUS WISHES TO BE HEARD

1. Whether the trial court erred in granting an expedited trial absent the posting of a possession bond pursuant to Utah Code § 78-36-8.5.

ISSUES RAISED AND CONSIDERED

Amicus Crossroads Urban Center believes that the issues on which it wishes to be heard were properly raised below and adopts the appellants' record references on Issues ## 1 and 2 of appellant.

STANDARD OF REVIEW

Amicus concurs in and adopts appellant's statement of the standard of review for issues ##1 and 2. The standard for denial of a request for continuance is abuse of discretion. Boice v. Marble, 982 P.2d 565 (Utah 1999)

STATEMENT OF THE CASE

This is an unlawful detainer action by the Housing Authority of the County of Salt Lake (hereinafter “Housing Authority”) as landlord, against John Thomas Snyder (hereinafter “Snyder”) as tenant. After setting an expedited trial over Snyder’s objections and denying Snyder’s motion for continuance filed on the eve of trial, the District Court terminated his tenancy, (R. 266), determined that Snyder was in unlawful detainer and awarded treble damages. (R. 267). The court granted the Housing Authority judgment in the amount of \$8,687.20 and a writ of restitution. (R. 296).

STATEMENT OF FACTS

1. The complaint in this unlawful detainer action was filed on March 6, 2000. (R. 1).
2. On March 13, 2000, Snyder filed an answer. (R. 17).
3. Snyder filed a Motion to Dismiss on March 20, 2000. (R. 24).
4. On March 27, 2000, the trial court denied the motion to dismiss before Housing Authority responded. (R. 31).
5. The Housing Authority filed a certificate of readiness for trial dated March 17, 2000, four days after Snyder’s answer was filed (R. 29). That certificate of readiness for trial stated that:

* * *

2. . . .; that opposing parties have had reasonable time to pursue discovery;

. . .

* * *

4. That reasonable discussions to attempt settlement have been pursued by counsel and their clients, but no settlement has been effected. (Such discussions are to be realistic in nature and not limited to nonresponse to an offer. The duty to effectively negotiate lies with all parties.) (R. 29-30).
6. Snyder filed an objection to the Certificate of Readiness for Trial on March 20, 2000 (R. 27).
7. Snyder's objection to the Certificate of Readiness for Trial was based on the lack of opportunity for discovery or settlement discussions (R. 27).
8. The trial court denied Snyder's objection to the certificate of Readiness for Trial on March 27, 2000 before the Housing Authority responded. (R. 31).
9. On April 6, 2000, the Court set the matter for an expedited trial on May 8, 2000.
10. On or about May 1, 2000, Snyder filed a Motion for Summary Judgment (R. 229).
11. On May 5, 2000, Housing Authority filed a Memorandum in Opposition to defendant's Motion for Summary Judgment. (R.).
12. On May 5, 2000, Snyder filed a motion for continuance (R. 153)
13. At trial on May 8, 2000, defendant again moved for a continuance, because he had not been afforded the opportunity to engage in discovery, (Transcript, 10:14-19) and objected to testimony by witnesses that had not been disclosed prior to trial. (Transcript, 34:12-17).
14. The trial court denied the request for continuance and to disallow certain testimony. (Transcript, 10:20-22).
15. The court found that Snyder was in unlawful detainer of the premises and awarded

treble damages. (Transcript, p. 102:16-24; Findings of Fact, ¶ 9 (R. 267)).

16. The court granted the Housing Authority judgment in the amount of \$8,687.20 and an order of restitution. Judgment, p. 2 (R. 296).

SUMMARY OF THE ARGUMENT

The trial court erred in granting Housing Authority an expedited trial in violation of Utah statute and Snyder’s due process rights, since Housing Authority chose not to file a possession bond pursuant to Utah Code § 78-36-8.5 nor did defendant request an expedited hearing.

ARGUMENT

THE TRIAL COURT IMPROPERLY SCHEDULED AN EXPEDITED TRIAL IN THIS CASE

- A. Utah statutes do not establish any right to an expedited trial in unlawful detainer actions.

The Utah Rules of Civil Procedure and the Utah Code of Judicial Administration establish a procedure for the scheduling of trials which applies to all civil cases in district courts. Rule 40(a), URCiv P, provides that cases will be placed upon the trial calendar upon a request of a party or by action of the court. The rule further provides that “[p]recedence shall be given to actions entitled thereto by statute.” Thus, for example, hearings on requests for injunctions under URCivP, Rule 65A “shall be scheduled for hearing at the earliest possible time and take precedence over all other civil matters....” No statute or rule provides for such priority trial setting for eviction actions. See Utah Code § 78-36-1 through § 78-36-12.6.

Furthermore, Rule 26, URCivP as amended in 1999, provides a clear procedure to be used in civil cases, beginning with a discovery and scheduling conference. While here defendant did not have counsel until April 21, 2000, placing this case outside the parameters of this rule pursuant to Rule 26 (a)(2)(A)(vi), once counsel appeared on behalf of defendant, this rule should have applied and a discovery and scheduling conference held. It was not. Plaintiff failed to fulfill its duty under the rules.

Nor should the trial court have allowed this matter to go to trial in light of this rule and Snyder's objections to Housing Authority's request for trial setting based on a lack of opportunity to conduct discovery. This was error.

In fact the Advisory Committee notes on changes to Rules 16(b) and 26(a)(2) specify that:

The scheduling and management conference is designed to encourage the parties and the court to take earlier and better control of the litigation. If possible, the trial date should be set at this conference as well as dates for all the necessary pretrial steps....

...The committee did not seek to exempt simple cases. The rule amendments benefit simple as well as complex litigation.

Here a brief pretrial conference, the establishment of a compact discovery schedule and the setting of a trial date with input from all parties could have easily occurred, allowing for reasonable discovery by both Housing Authority and Snyder. Failure to comply with this rule was error.

This same rule also assumes that a certificate of readiness for trial will accurately reflect the status of pretrial activities by the parties or one party will object. Here, the

certificate of readiness was filed on March 20, 2000 exactly one week after the answer was filed and before any discovery had occurred. Yet Housing Authority claimed in that document that

- * * *
2. . . . opposing parties have had reasonable time to pursue discovery; . . .
* * *
4. That reasonable discussions to attempt settlement have been pursued by counsel and their clients, but no settlement has been effected. (R. 29-30).

Neither statement was correct.

Rule 16(b), which applies to unrepresented parties as well, allows but does not require a court to hold such a scheduling and management conference, and requires that “any party may and the plaintiff shall, at the close of all discovery, certify to the court that the case is ready for trial. The court shall schedule the trial as soon as *mutually convenient to the court and parties*....” (Emphasis added). Here it seems clear that discovery had not been completed, no settlement negotiations had occurred, a reasonable time to conduct discovery had not passed, and the date chosen by the court for trial was not convenient to Snyder since he had opposed the certificate and sought time to do discovery. Setting the trial here, under these circumstances, was error.

Finally, the Utah Code of Judicial Administration provides a bit of additional insight. Formerly Rule 4-104 set forth a procedure whereby a party could seek a special trial setting in matters of “exceptional urgency” but this provision was repealed November 1, 1999, to coincide with the amendments to Rules 16 and 26 discussed above. There now is no longer such a special trial setting.

There is no formal discussion concerning objections to these certificates of readiness, but the fundamental policy reflected in the rules themselves and in the Advisory Committee note is one of cooperation between the parties and reasonable action by the court to assure that all parties have a reasonable opportunity for discovery before trial. The trial court's action in setting the trial in this matter so quickly that Snyder was denied the right to do discovery was error. The Code also establishes a procedure for the expedited disposition of motions, but does not do so for trial settings. See Utah Code of Judicial Administration, Rule 4-501(4).

Finally, Snyder sought to overturn the improper expedited setting by seeking a continuance, albeit at the last minute. While the decision to grant or deny such a request is clearly within the sound discretion of the trial court, *Christenson v. Jewkes*, 761 P.2d 1375 (Utah 1988), here the trial court abused its discretion. First, Housing Authority chose not to file a possession bond and initiate the alternative hearing procedure (see further discussion in Point B. below) and thus was in no position to complain about a continuance. Second, since rent was being paid into the court, Housing Authority was suffering no financial loss. (See Notice of tender/payment of rent in to registry of court. R. 138). Third, defendant was at a considerable disadvantage at trial, since he did not have the benefit of discovering the testimony of any of the five witnesses plaintiff called until they testified at trial. This violates Snyder's due process rights as well as constituting an abuse of discretion.

- B. Housing Authority waived the opportunity for an expedited hearing by failing to post a possession bond.

Recognizing that in many eviction cases the landlord seeks a quick proceeding to oust a tenant, the Utah Legislature adopted the possession bond procedure as an alternative procedure to the old forcible entry and detainer statute (Utah Code § 78-36-1et seq.). This alternative procedure, set forth in Utah Code § 78-36-8.5 provides exactly what Housing Authority sought here: an expedited hearing. The problem, of course, is that here Housing Authority got what it wanted without having to follow the procedures that apply to all other landlords in the State of Utah and without posting a bond.

The alternative procedure statute states:

(1) At any time between the filing of his complaint and the entry of final judgment, the plaintiff may execute and file a possession bond.... The plaintiff shall notify the defendant that he has filed a possession bond. This notice shall... inform the defendant of all of the alternative remedies and procedures under Subsection (2).

(2) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsection (1): ...

[three choices are detailed: payment in full, execution of a counter-bond or a hearing request]

(3) If the defendant does not elect and comply with a remedy under Subsection (2) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. The constable of the precinct or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(4) If the defendant demands a hearing under Subsection (2)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required

in Subsection (2)(b). If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Utah Code § 78-36-8.5

This procedure was adopted in 1981 to speed up evictions.¹ The reason it was necessary was because the old statute simply did not provide for a speedy enough trial. Under the possession bond procedure, the landlord can force the tenant to request a hearing, which will be held “prior to the expiration of three days from the date the defendant is served with notice of filing of plaintiff’s possession bond” (Utah Code § 78-36-8.5 (2)(c)).² If the tenant does not request a hearing or make payment or post a counterbond within three days, an eviction order is issued. This is the legislature’s expedited hearing procedure, not unfairly jumping eviction cases ahead of other civil cases on the trial calendar and curtailing discovery.

There was a time when many of the old Circuit Courts would routinely schedule eviction trials immediately after a defendant answered without requiring the landlord to follow the possession bond procedure. After this was brought to the attention of counsel for the Administrative Office of the Courts, that office issued a memorandum to court clerks advising them not to schedule expedited hearings unless the landlord posted a bond. That

¹ See discussion in Utah Legal Services, Utah Landlord/Tenant Law Manual (1997) at V-12 through V-18.

² This is generally impossible. See Utah Legal Services, Utah Landlord/Tenant Law Manual (1997) at V-16-18.

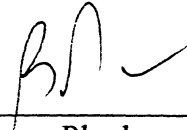
memo concluded that “[i]f the Legislature intended all eviction matters to receive expedited treatment, then the possession bond statute would be meaningless. “ See R. 153, attachment). This memo made clear it did not prevent “expedited trials upon the court’s motion” but pointed out that “such expediting must be done as the same circumstances as in other cases.” (R. 153, attachment). This analysis has generally been followed throughout the state with the exception of a few courts which allow an expedited trial without posting the bond. This procedure, the one used here, directly contradicts the intent of the legislature and the analysis of the Administrative Office of the Courts. It is also bad policy. Granting an expedited hearing to Housing Authority without the posting of a bond here was error.

CONCLUSION AND RELIEF SOUGHT

Amicus requests this Court remand this case for a new trial after defendant has had a reasonable chance for discovery and resolve the issue of expedited trial settings in eviction cases once and for all by declaring that, absent the posting of a possession bond, such cases are to be treated just like other civil cases with no special time priority, should be handled under the procedures of new Rules 16 and 26, and should allow for reasonable discovery before establishing a trial date. Further this Court should establish guidelines for trial judges to discourage the premature filing of certificates of readiness for trial and avoid setting trials based on such filings.

Respectfully submitted this 1st day of November, 2000.

UTAH LEGAL SERVICES, INC.
Attorneys for Amicus Crossroads Urban Center



By: Bruce Plenk

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing BRIEF OF AMICUS each to:

Kimberly D. Washburn
STIRBA & HATHAWAY
Attorneys for Plaintiff/Appellee
PO Box 810
Salt Lake City, Utah 84110-0810

BRIAN M. BARNARD
JAMES L. HARRIS, JR.
UTAH LEGAL CLINIC
Attorneys for Defendant/Appellant
214 East Fifth South Street
Salt Lake City, Utah 84111-3204

on the 1st day of NOVEMBER, 2000, postage prepaid by depositing them with the United States Postal Service.

