

1986

James Fitzgerald v. Gale Critchfield : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *James Fitzgerald v. Gale Critchfield*, No. 860041.00 (Utah Supreme Court, 1986).
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UTAH COURT OF APPEALS
BRIEF

DOCKET NO. 860041

IN THE SUPREME COURT OF THE STATE OF UTAH

JAMES FITZGERALD, :

Plaintiff-Respondent. :

-vs- :

GALE CRITCHFIELD, :

Defendant-Appellant. :

860041-CA
Supreme Court No. 20,028

PLAINTIFF AND RESPONDENT'S BRIEF

Appeal from the Judgment of the Fourth Judicial
District Court for Utah County
Honorable Robert J. Bullock, Presiding

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FILED
JAN 22 1985

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-vs- :
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JAMES FITZGERALD, :
Plaintiff-Respondent. : Supreme Court No. 20,028
-vs- :
GALE CRITCHFIELD, :
Defendant-Appellant. :

PLAINTIFF AND RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action wherein Plaintiff-Respondent sought to recover money damages for the feeding of cattle, and Defendant-Appellant sought to recover for cattle which were injured or killed.

DISPOSITION IN THE LOWER COURT

This matter was heard by the Fourth Judicial District Court, Judge Robert J. Bullock, presiding. The Court found that Plaintiff-Respondent (Fitzgerald) should prevail by virtue of having produced a preponderance of the evidence. The Court further found that there was an agreement between the parties for the payment of

\$1.00 per day per head of cattle, and that Fitzgerald had been damaged in the sum of \$11,367.50 plus costs. Finally, the Court dismissed the counterclaim of Defendant-Appellant (Critchfield), having found that the evidence was too speculative to support his claim.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks an Order of this Court confirming the judgment granted below.

STATEMENT OF FACTS

In late 1982, Fitzgerald and Critchfield discussed an arrangement whereby Fitzgerald would feed and care for cattle owned by Critchfield. Critchfield had previously paid \$1.50 per day per head of cattle for the same service (Page 197 - Record on Appeal). Fitzgerald testified that he agreed to feed and care for the cattle for \$1.00 per day per head (Page 146 and 147 - Record on Appeal). A second witness also testified that Critchfield had agreed to pay \$1.00 per day per head (Page 191 - Record on Appeal).

Critchfield made a partial payment of \$3,000.00 in February, 1983 (Page 149 - Record on Appeal). Critchfield then secretly removed his cattle from Fitzgerald's property without paying the amounts which were due and owing (Page 149 and 150 - Record on Appeal).

Fitzgerald had previously filed a Chapter 11 Business Reorganization Petition under 11 U.S.C.A. §301 et al, and had a confirmed Plan of Reorganization in effect pursuant to 11 U.S.C.A. 11-29. As the Debtor-in-possession, Fitzgerald elected to file a lawsuit in the Fourth Judicial District Court to recover damages from Critchfield.

At trial, Fitzgerald testified to the damage amounts (Page 164-171 - Record on Appeal). A second witness confirmed the testimony of Fitzgerald (Page 181 and 182 - Record on Appeal).

Critchfield testified, as did several witnesses, regarding his claims that his cattle had been lost or injured. Critchfield unsuccessfully attempted to qualify an uneducated boy as an expert witness (Page 240 and 241 - Record on Appeal).

After considering the evidence, the trial Court ruled in favor of Fitzgerald and against Critchfield, and specifically found that Fitzgerald had been damaged in the sum of \$11,367.50 (Page 264 - Record on Appeal).

SUMMARY OF ARGUMENT

Under the applicable Bankruptcy Code statutes, Fitzgerald, as the debtor-in-possession, was entitled to sue Critchfield in State Court. The findings of the trial Court were supported by the evidence in the record. Pre-judgment interest on a contract is specifically provided for by statute. The trial Court's ruling that Brad Carlyle was not qualified as an expert witness was within the sound discretion of the Court.

ARGUMENT

POINT I. THE DISTRICT COURT HAD JURISDICTION OVER THIS ACTION.

28 U.S.C.A. 1334(b) provides that:

...The District Courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11...

11 U.S.C.A. 362 provides that:

...A Petition filed under...this title operates as a stay, applicable to all identities, of...the commencement or continuation...of a judicial, administrative, or other action or proceeding against the Debtor...or to recover a claim against the Debtor that arose before the commencement of the case...

The automatic stay is one of the fundamental Debtor protections provided by bankruptcy laws. It stops all collection efforts, all harrassment, and all foreclosure actions against the Debtor. It permits the Debtor to attempt a repayment or a reorganization plan, or to be relieved of the financial pressures that drove him into bankruptcy. Defendant-Appellant argues that an entity who owes the Debtor money should be protected by the Stay, granted under the foregoing Section which protects the Debtor himself. This is clearly not the intent nor purpose of the bankruptcy code. §362 prevents action against the Debtor, but does not prevent actions by the Debtor to preserve or to obtain judgments to enhance the estate and the property of the Debtor.

Rule 1001 of the Bankruptcy Rules provides that:

The Bankruptcy Rules and Forms govern procedures in the United States Bankruptcy Courts in cases under Chapters 7, 9, 11, and 13 of Title 11 of the United States Code.

Rule 6009 of the Bankruptcy Rules provides that:

...With or without Court approval, the Trustee or Debtor-in-possession may prosecute...any actions or proceedings in behalf of the estate before any tribunal.

11 U.S.C.A. 323 provides that:

- (a) The Trustee in a case under this title is the representative of the estate.
- (b) The Trustee in a case under this title has the capacity to sue or be sued.

11 U.S.C.A. 1107 provides that:

...A Debtor-in-possession shall have all the rights...and shall perform all the duties... of a Trustee...

In the recent case of In Re Curtis 40 B.R. 795 (1984) the Court set forth the purpose of the automatic stay provision as follows:

The automatic stay is, of course, one of the fundamental Debtor protections under the Bankruptcy Code...Its primary purpose is to protect the Debtor and its estate from Creditors...Generally, proceedings...involving post-petition activities of the Debtor need not be stayed because they bear no relationship to the purpose of the automatic stay, which is Debtor protection from his creditors.

Fitzgerald, as the debtor-in-possession, could elect to sue in State Court pursuant to Rule 6009 of the Bankruptcy Rules.

Critchfield's argument that the stay should protect him is not supported by the law.

POINT II. THE FINDINGS OF THE TRIAL COURT WERE SUPPORTED BY THE EVIDENCE.

Defendant-Appellant's Points II through V constitute a re-argument of the evidence presented at trial. These arguments were made again when Defendant-Appellant filed his Motion to Amend Findings of Fact and Conclusions of Law. Again, the trial Court rejected these arguments.

It has been consistently stated that:

...Where the evidence is in conflict, this Court will not upset the findings in the trial Court unless the evidence so clearly preponderates against them that this Court is convinced that a manifest injustice has been done. Horton v. Horton, et al, Utah Supreme Court No. 18712, filed December 4, 1984. See also Hatch v. Bastian, Utah, 567 P.2d 1100 (1977). See also Kiahtipes v. Mills, Utah, 649 P.2d 9 (1982).

The four findings that Defendant-Appellant disagrees with were supported by evidence received at trial. Plaintiff-Respondent has previously cited the testimony in the record which supports the trial Court's rulings (See Statement of Facts Infra).

It has been recently stated that:

On review of questions of fact, this Court views the evidence and all the inferences that can reasonably be drawn therefrom in a light most supportive of the trial Court's findings. Poulson v. Poulson, Utah, 672 P2d 97 (1983).

The record as herein cited shows, by way of direct testimony and appropriate inferences therefrom, that

- a. There was an agreement for \$1.00 per day per head, (Page 146 and 147 - Record on appeal) and;
- b. Fitzgerald was entitled to payment for each day he fed and cared for the cattle, (Page 146 and 147, 169 - Record on appeal) and;
- c. Fitzgerald had fully performed his agreement, (Page 65,66, and 264 - Record on Appeal) and;
- d. Critchfield was responsible to pay for a veterinarian's bill and damages to haystacks caused by his cattle (Page 152 through 154 and Pages 169 through 171 - Record on Appeal).

Plaintiff-Respondent urges that the findings in the trial Court were supported by the evidence and within the sound discretion of the trial Court.

POINT III. PLAINTIFF-RESPONDENT WAS ENTITLED TO PRE-JUDGMENT INTEREST ON THE DEBT OWED BY DEFENDANT-APPELLANT.

The trial Court found that an agreement existed between the parties, and that Defendant-Appellant had breached said agreement by failing to pay the sum of \$11,367.50.

§15-1-1 U.C.A. 1953 as amended, provides that:

The legal rate of interest for the loan or forbearance of any money, goods, or things in action, shall be 10% per annum.

Interest is allowable on debts which are overdue, even in the absence of the statute or contract providing therefor. Board of Education of Granite School District v. Salt Lake City, Utah, 659 P2d 1036 (1983).

Defendant-Appellant owed a debt to Plaintiff-Respondent of \$11,367.50 as of April 19, 1983, and should therefore be entitled to interest as provided by Statute at the rate of 10% per annum until judgment entered.

POINT IV. THE TRIAL COURT'S RULING THAT BRAD CARLYLE WAS NOT QUALIFIED AS AN EXPERT WITNESS WAS SUPPORTED BY THE EVIDENCE AND WITHIN THE SOUND DISCRETION OF THE COURT.

Defendant-Appellant attempted to qualify Brad Carlyle as a cattle expert after an objection was raised by counsel for Plaintiff-Respondent.

Carlyle's only asserted qualification was that he was born and raised on a dairy farm (Page 240 - Record on Appeal).

He had taken no educational classes concerning cattle or dairies. He provided no information concerning how much the cattle were fed, what was required during the various seasons, the age of the cattle, or the distinctions between dairy cattle and beef cattle.

The complete section of the case cited by Defendant-Appellant provides that:

The basic rules are: that if the witness has specialized knowledge in the field to the extent that his testimony can be helpful to the jury on matters with which laypersons are not familiar, his testimony can be received as an expert; and that whether he is so qualified rests within the sound discretion of the trial Court. Fillmore City v. Reeves, Utah, 571 P2d 1316 (1977), Lamb v. Bangart, Utah, 525 P2d 602 (1984), and State v. Clayton, Utah, 646 P2d 723 (1982).

These cases show that the qualification of an expert witness is within the discretion of the trial Court. In this case, the trial Court clearly ruled that Brad Carlyle was not qualified as an expert under Rule 702 of the Utah Rules of Evidence.

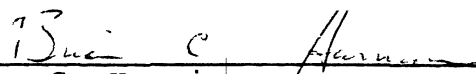
CONCLUSION

Plaintiff-Respondent urges that under the applicable Bankruptcy Code statutes, Fitzgerald, as the debtor-in-possession, was entitled to sue Critchfield in State Court. Furthermore, the findings of the trial Court were supported by the evidence. Pre-judgment interest on a contract is specifically provided for by statute. Finally, the trial Court's ruling that Brad Carlyle was not qualified as an expert witness was within the sound discretion of the Court.

It is respectfully urged that the judgment granted by the trial Court below should be sustained.

DATED this 18th day of January, 1985.


Respectfully submitted,



Brian C. Harrison
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CERTIFICATE OF SERVICE

I hereby certify that I mailed four copies of the foregoing Brief to Joseph C. Rust at 2000 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111, postage prepaid, this 31st day of January, 1985.


Brian C. Harrison