

2001

Lulu Black v. V. Pershing Nelson, Ralph L. Smith, Gladys Smith, Gladys' Beauty Salon : Unknown

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

H Wayne Wadsorth; Hanson, Wadsworth & Russon; Ray H Ivie; Ivie & Young; Attorneys for Defendant Respondent .

Jackson Howard; Howard, Lewis & Petersen; Attorney for Plaintiff-Appellant.

Recommended Citation

Legal Brief, *Lulu Black v. V. Pershing Nelson, Ralph L. Smith, Gladys Smith, Gladys' Beauty Salon*, No. 13470.00 (Utah Supreme Court, 2001).

https://digitalcommons.law.byu.edu/byu_sc2/729

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BY 70

RECEIVED
LAW LIBRARY

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

DEC 6 1975

BRIGHAM YOUNG UNIVERSITY
Reuben Clark Law School

LULU BLACK,

Plaintiff-Appellant,

VS.

V. PERSHING NELSON, RALPH L.
SMITH and GLADYS SMITH, d/b/a
GLADYS' BEAUTY SALON,

Defendants-Respondents.

Case No.

13470

ABSTRACT OF TRANSCRIPT OF EVIDENCE IN
ACCORDANCE WITH RULE 75(E), U. R. C. P.,
AS AMENDED, 1961.

An Appeal from the Judgment of the Fourth Judicial
District Court in and for Utah County, State of Utah,
before the Honorable George E. Ballif, Judge.

JACKSON HOWARD, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84601
Attorneys for Plaintiff-Appellant

RAY H. IVIE, for:
IVIE & YOUNG
48 North University Avenue
Provo, Utah 84601

*Attorneys for Ralph L. Smith and Gladys Smith,
Defendants-Respondents*

H. WAYNE WADSWORTH, for:
HANSON, WADSWORTH & RUSSON
702 Kearns Building
Salt Lake City, Utah 84101

*Attorney for V. Pershing Nelson,
Defendant-Respondent*

FILED
APR 12 1974

Clerk Supreme

TABLE OF CONTENTS

	Page
INDEX OF WITNESSES WHOSE TESTIMONY HAS BEEN EXTRACTED:	
SUZAN HANKS	1
V. PERSHING NELSON	3
BERT GREEN, M.D.	4
NEPHI K. KEZERIAN, M.D.	4
LOWELL WOODWARD	4
GAIL TIMMS	5
CRAIG CLARK, M.D.	5
GLORIA HOWARD	6
EUGENE BLACK	6
LULU BLACK	7
NEPHI K. KEZERIAN, M.D. (recalled)	9
LULU BLACK (recalled)	9
IRENE WOOTTON	11
ELAINE AHLANDER	11
RALPH SMITH	11
MARTIN MILLER	13
GLADYS SMITH	14

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

LULU BLACK,

Plaintiff-Appellant,

vs.

V. PERSHING NELSON, RALPH L.
SMITH and GLADYS SMITH, d/b/a
GLADYS' BEAUTY SALON,

Defendants-Respondents.

Case No.

13470

ABSTRACT OF TRANSCRIPT OF EVIDENCE IN
ACCORDANCE WITH RULE 75(E), U. R. C. P.,
AS AMENDED, 1961.

Comes now the plaintiff-appellant, Lulu Black, and submits the following Abstract of Transcript of Evidence which was ordered printed by the Court, in accordance with Rule 75(E) of the Utah Rules of Civil Procedure, as amended, 1961.

SUZAN HANKS, having been first duly sworn to tell the truth, was called as a witness and her testimony is abstracted as follows.

Mrs. Hanks testified that she has worked for Gladys' Beauty Salon for 4½ to 5 years and that she developed a

regular clientele, one of whom was Mrs. Lulu Black. She indicated that she had done Mrs. Black's hair for approximately one year prior to the date of the accident which was June 25, 1971. Mrs. Hanks had worked at the Gladys' location at 201 North University Avenue in Provo, Utah, for approximately 2 years. She had occasion to see patrons come and go to Gladys' establishment through the rear door.

Mrs. Hanks testified that she had been given a key to the outside rear door, as were most of the employees. She testified that approximately 50% of the time that the rear door was locked, and the other 50% of the time that it was unlocked, and that this ordinarily depended on what time she arrived. If some of the employees arrived before her, then the door was quite often unlocked. Mrs. Hanks named some of the clientele that were accustomed to using the rear door. Mrs. Hanks also indicated that she observed patrons using the door at times when the owners, Mr. and Mrs. Smith, were present in the establishment. Mrs. Hanks testified that the Coca Cola man, the washer and dryer man, and the beauty supply man also used the rear entrance to make their deliveries. She testified that she never saw Mrs. Black use the rear door.

Mrs. Hanks testified that it was her opinion that the employees were given keys to the rear door because on mornings when they had early morning appointments and there wasn't anyone there to open the door, then they would be able to enter the establishment through the rear

and also to keep people, particularly unauthorized children, from going down into the stair area into the storage room where supplies were kept.

V. PERSHING NELSON, having been first duly sworn to tell the truth, was called as a witness and his testimony was abstracted as follows.

Mr. Nelson testified that he was the owner of the building where the accident occurred and that Gladys' Beauty Salon was one of his tenants. Mr. Nelson was shown some pictures and exhibits purporting to depict the garage area and the rear entrance to the beauty salon and he identified these photographs as a fair representation of the premises. Mr. Nelson also identified the position of the light switch, which is immediately to the left of the interior door leading into Gladys' and also the interior door on the inside of the landing which has an "Employees Only" sign on it. Mr. Nelson confirmed that there is no light switch near the outside door into the landing area.

Mr. Nelson testified that he felt it was Mr. Smith's responsibility to maintain the rear entrance completely, and that there was nothing in the written lease that prohibited use of that entrance by Mr. Smith's employees. Mr. Nelson was asked to identify additional photographs which indicated that in the basement was a storage area. Mr. Nelson also indicated that the rear door is also used by another tenant in the building, "The Spice Rack," for access to storage areas and other purposes.

It was Mr. Nelson's impression that the outside door through which Mrs. Black entered the premises was used for freight purposes and was not a normal entrance for patrons. Mr. Nelson testified that he had seen employees of both his tenants, Gladys' Beauty Salon and "The Spice Rack," using that stairway and landing on occasion. Mr. Nelson testified that while he didn't always check the rear entrance door to see if it was locked, but if he observed the doorway open any time when he did check it, he locked it at that time. Generally speaking, if the door was closed, he did not check the door to see whether or or not it was locked.

DR. BERT GREEN, having been first duly sworn to tell the truth, was called as a witness and Dr. Green testified concerning the nature and extent of Mrs. Black's injuries. Dr. Green's testimony is of no consequence insofar as the appeal is concerned.

DR. NEPHI K. KEZERIAN, having been first duly sworn to tell the truth, was called as a witness, and he also offered testimony concerning the nature and extent of Mrs. Black's injuries. Dr. Kezerian's testimony is of no consequence insofar as this appeal is concerned, and therefore, his testimony will not be abstracted.

MR. LOWELL WOODWARD, having been first duly sworn to tell the truth, was called as a witness and testified concerning his acquaintance with Mr. and Mrs. Black and the various activities that they engaged in. His testimony is of no consequence concerning the issues

involved in this appeal and accordingly will not be abstracted.

MRS. GAIL TIMMS, having been first duly sworn to tell the truth, was called as a witness and her testimony is abstracted as follows:

Mrs. Timms testified that she is a cosmetologist and worked for Gladys' Beauty Salon from 1966 through 1971, and she worked for approximately 4 years at the location at 201 North University Avenue, Provo, Utah. Mrs. Timms testified that there were a few patrons that used the rear door of Gladys' Beauty Salon particularly ones who were friends of Mrs. Smith, the owner of the beauty salon. She testified that the rear door was ordinarily opened in the morning and that usually it was left open. She also testified that there were no definite instructions given employees concerning telling the patrons not to use the back door and that she personally never advised any of her patrons to come in the back way. She testified that she was given a key to the rear door and that it was frequently open. Mrs. Timms also testified that the majority of the patrons did, in fact, use the front door. Mrs. Timms named the names of several patrons who used the rear door. Mrs. Timms stated that in her opinion the outside rear door was always open. Mrs. Timms didn't recall ever telling a patron that she shouldn't use the rear door.

DR. CRAIG CLARK, having been first duly sworn to tell the truth, was called as a witness concerning the

nature and extent of the injuries suffered by Mrs. Lulu Black, and his testimony is of no consequence insofar as this appeal is concerned.

MRS. GLORIA HOWARD, having been first duly sworn to tell the truth, was called as a witness and testified as follows:

Mrs. Howard was a patron of Gladys' Beauty Salon and testified that she was a frequent customer of Gladys' Beauty Salon and that she frequently went in and out through the rear door.

MR. EUGENE BLACK, having been first duly sworn to tell the truth, was called as a witness and testified concerning his relationship with his wife, her prior physical condition and abilities, and the effect of her injuries upon her household work and other activities.

His testimony is of very little consequence insofar as this appeal is concerned except that Mr. Black testified that he and his wife had made arrangements to go to Idaho on the day following June 25, 1971, and that he had his automobile in the garage in order to have some maintenance done on the automobile in preparation for going on that trip. Mr. Black testified that he needed to use his wife's car and asked her if she could pick him up at the Courthouse at 3:00 o'clock p.m. Mr. Black testified that it was necessary for him to use his wife's car and that she made arrangements to leave the beauty shop to pick him up and then to return to have her hair set and dried. When Mrs. Black came to the Courthouse to pick

up her husband, they failed to make contact, and it was upon her return to the beauty shop that the accident, which is the subject of this litigation, occurred.

MRS. LULU BLACK, having been first duly sworn to tell the truth, was called as a witness and her testimony is abstracted as follows:

Mrs. Black first told of some of her family background and her education and training. She also discussed her medical history and the state of her health in general, as well as the effect of her injuries on the state of her health. All of these items are of no consequence insofar as this appeal is concerned.

Mrs. Black did testify that she was a regular patron of Gladys' Beauty Salon and that ordinarily her hair was done by Mrs. Suzan Hanks. When she arrived for her beauty appointment on June 25, 1971, she entered the front door. Her husband met her at the beauty salon and said that he had put his car in the garage to have it serviced so that it would be ready to go to Idaho and her husband asked her if she would be available to pick him up in a half hour at the courthouse. Mrs. Black arranged with Mrs. Suzan Hanks to leave the beauty salon to pick up her husband so that he could have the car and then to return to the beauty salon to finish having her hair dried and combed out. This necessitated Mrs. Black leaving the beauty salon with her hair up in curlers. After her hair was put up she left the beauty salon and went over to the courthouse.

Mrs. Black testified she went in the courthouse to look for her husband but was unable to find him. Upon leaving the courthouse, she drove back to Gladys' Beauty Salon and could not find a parking place on North University Avenue. She drove around the block and could not find one close to the shop so she ended up parking on First East and Second North. After she got out of the car, she approached Gladys' at the rear entrance in the back of the shop. She decided to go in that way because she had her hair up in rollers, because it was more convenient to her parking place and it was closer to the dryers which were situated in the rear of the beauty salon.

Mrs. Black testified that although she had never entered the beauty salon from that way before, she had on one prior occasion exited through the rear door and that she was aware that other patrons had used the rear entrance.

She testified as she opened the outside door to the rear entrance, the sunlight from the outside shone in. As she stepped inside, the door closed behind her and she found herself in the dark. She testified that she felt she was just as close to the inside doorway into Gladys' Beauty Salon as she was to the door back outside that she had just entered. She also testified that when she opened the door, she could see the passageway to the beauty shop door and that it was only at the most, three or four steps away. She testified that she just didn't think to turn around go back to the door that had closed on her and that she didn't know where it was as much

as she knew where the lighted door was and that she was going in that direction. After taking one or two steps, Mrs. Black fell down an unguarded stairway and suffered the injuries which were the subject of this litigation. Mrs. Black testified that she did not know that there was a stairway there and also that it was pitch black inside the landing area after the door closed.

The rest of Mrs. Black's testimony on direct examination is concerned with her injuries and is of no consequence so far as this appeal is concerned.

DR. NEPHI K. KEZERIAN, having been previously duly sworn to tell the truth, was recalled as a witness and was cross-examined concerning his testimony. Again, his testimony dealt only with the nature and extent of Mrs. Black's injuries which are of no consequence insofar as this appeal is concerned.

MRS. LULU BLACK, having been previously sworn, was recalled to continue her testimony and continued to testify concerning the nature and extent of her injuries, which injuries are of no consequence insofar as this appeal is concerned.

Mrs. Black testified that when she walked in, she could not tell whether the light was on or not because of the sunlight shining into the room. It was only after the door closed behind her that she realized that there was no light inside the landing area. Mrs. Black also testified that her attention was directed towards the west wall where the interior doorway into Gladys' Beauty

Salon was and not to the south wall where the stairway was situated. She testified that she proceeded in what she thought was a southwesterly or westerly direction, but did not know that the stairway was in such close proximity to the interior door. She testified that she could not say for sure whether she saw a sign on the interior door saying "Employees Only" or not. She testified that she did not remember whether she actually closed the door or whether the door closed behind her. She testified that she does not remember whether she closed the door with her hand or whether it closed automatically.

Mrs. Black testified that she did not see any light underneath the interior door to Gladys' Beauty Salon. She had previously testified that she did, in fact, see light through the interior door. Mrs. Black testified that the area was pitch black after the door closed behind her. She also testified that after the door closed behind her, she was halfway or more inside the landing area, and that she felt she was actually closer to the interior door than she was to the door that had closed behind her.

Mrs. Black testified that when she opened the door, the sunlight was able to show her where the interior door to the beauty salon was so that she could proceed in that direction.

Mrs. Black testified that ordinarily, she used the front door, although on one occasion, she had gone out the back way, and that on the occasion when she left the rear entrance, she did not see the stairway because

she was looking towards the outside door when she was exiting the establishment.

MRS. IRENE WOOTTON, having been first duly sworn to tell the truth, was called as a witness and her testimony is abstracted as follows.

Mrs. Wootton was a patron of Gladys' Beauty Salon and had been for four or five years. She testified that she ordinarily had her hair done once a week. She also testified that she had never gone into the shop via the rear door, but that she had occasionally left the shop via the rear door, if it was convenient.

MRS. ELAINE AHLANDER, having been first duly sworn to tell the truth, was called as a witness and her testimony is abstracted as follows.

Mrs. Ahlander testified that she was a client of Gladys' Beauty Salon for a period of about eight years and that she went to the beauty salon once or twice a week during that period. Mrs. Ahlander testified that she had never entered nor had she left through the back door to the beauty salon, although she had tried the door a couple of times and found it locked. She also testified that Mr. and Mrs. Smith have asked that their customers not use the rear door.

MR. RALPH L. SMITH, having been first duly sworn to tell the truth, was called as a witness and his testimony is abstracted as follows.

Mr. Smith testified that at the time of the accident,

he was the owner of a beauty salon which was operated at 206 North University Avenue, Provo, Utah. Mr. Smith testified that the rear outside door was opened by a key and that these keys were only issued to his employees. He also testified that the employees and another tenant in the building called "The Spice Rack" and Mr. Nelson, the landlord, plus a previous tenant, Mr. Dale Pinegar, had keys to the outside door. To Mr. Smith's knowledge these were the only keys that existed at the time of the accident. Mr. Smith also testified concerning the existence of an "Employee's Only" sign on the interior door to the beauty salon. Mr. Smith described the premises and confirmed that certain photographs he was shown accurately depicted the scene in question.

Mr. Smith testified that he had told his employees several times that they were not to let patrons use the back door under any circumstances. He was particularly concerned about instances of theft of supplies in the basement. Mr. Smith testified that there was also a 100 watt light bulb in the hall and that the hallway, as far as he knew, was lit all the time. Mr. Smith testified that he used the back stairway anywhere from 6 to 20 times a day in order to obtain supplies.

Mr. Smith also testified that he tried to keep the interior door locked, but that if anyone went out the interior door, it was automatically unlocked. Mr. Smith also testified that the light was on in the landing area

when they came back from lunch at 1:30 on June 25, 1971. Mr. Smith confirmed that the time of the accident was approximately 3:00 or 3:30 and that he heard Mrs. Black scream as she fell and that he was the first to reach her at the bottom of the stairway after the accident occurred.

Mr. Smith also testified that the light from the beauty salon will shine under the interior doorway and into the landing area when the door is shut.

Mr. Smith also testified concerning a peculiar characteristic of the outside door of the beauty salon in that when the door is half open the door will either close or it will fall completely open. Mr. Smith also offered some testimony concerning the nature of the door locks and that the door could be unlocked permanently by the turning of a small button on the inside of the door knob. Mr. Smith testified that he did give certain customers permission to use the rear door on occasion.

Mr. Smith also testified that he was not always at the beauty establishment since they also ran another business. Mr. Smith confirmed that the area in the landing area with both doors shut and the light off was pitch black except for such light as might shine from underneath the interior door.

MR. MARTIN MILLER, having been duly sworn to tell the truth, was called as a witness and his testimony is abstracted as follows:

Mr. Miller is a physics professor at Brigham Young University, and was called to testify as to the laws of motion involved in the way that the exterior door to the rear entrance of the beauty salon swung. Professor Miller testified that each time the door is opened it will always swing open because of the way that it is mounted. Mr. Miller presented a film which illustrated his testimony and the movie illustrated the fact that when the door is opened it normally tends to swing open. He also testified that if you swing it almost completely closed it will have a tendency to stay there, but if it moves just a small amount off of that closed position, that it tends to come open by itself. Mr. Miller also testified that the door swings in such a manner that it is able to be closed with just a slight wrist motion.

MRS. GLADYS SMITH, having been duly sworn to tell the truth, was called as a witness and testified and her testimony is abstracted as follows:

Mrs. Smith testified concerning the nature of her business relationship with her husband. She stated that she had, on occasion, given individuals permission to use the back door, but that other than those that she had given permission to use the rear door, she did not recall seeing any of her patrons enter or leave through the rear door. She also testified that she was occasionally away from the beauty salon attending to another business.

This abstract of the testimony of each of the wit-

nesses is submitted in accordance with the order of the Court pursuant to Rule 75(E) of the Utah Rules of Civil Procedure, as amended, 1961.

Respectfully submitted,

JACKSON HOWARD, for:
HOWARD, LEWIS & PETERSEN

Attorneys for

Plaintiff-Appellant

120 East 300 North
Provo, Utah 84601

**RECEIVED
LAW LIBRARY**

DEC 6 1975

**BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School**