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Alan P. Smith v. Jeril B. Wilson et al : Brief of Amicus Curiae

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ALAN P. SMITH,)
Plaintiff-Appellant,)
vs.) Case No. 15385
JERIL B. WILSON, BRYCE K.)
BRYNER, and CARBON COUNTY, A)
Body Corporate and Politic.)
Defendants-Respondents.)

BRIEF OF AMICUS CURIAE

APPEAL FROM A JUDGMENT OF THE SEVENTH
DISTRICT COURT OF CARBON COUNTY, HON.
MERRILL C. FAUX, SENIOR DISTRICT JUDGE

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FILED

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AMICUS CURIAE BRIEF ON APPEAL

STATEMENT OF FACTS

Amicus curiae address one fact situation in which the parties are in agreement, which is that the Honorable A. John Ruggeri, Judge of the City Court of Price, Utah, appointed Alan P. Smith as a free lance reporter to report three separate preliminary examinations on three defendants who were charged with criminal homicide.

ARGUMENT

POINT I

A CERTIFIED SHORTHAND REPORTER APPOINTED BY A MAGISTRATE UNDER TITLE 77, CHAPTER 15, SECTION 14, IS ENTITLED TO COMPENSATION BY PROVISION OF STATUTE, NOT CONTRACT, AND THE AMOUNT OF COMPENSATION IS THE REASONABLE VALUE OF THE SERVICES.

Title 77, Chapter 15, Section 14, Utah Code Annotated 1953 is an ancient statute dating back to 1888 and provides as follows:

"77-15-14. When testimony reduced to writing - Form of deposition. The testimony of each witness in cases of homicide must be reduced to writing as a deposition by the magistrate, or under his direction; and in other cases upon the demand of the prosecuting attorney. The magistrate before whom the examination shall be had may, with the consent of the prosecuting attorney, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he may appoint a stenographer. The deposition or testimony of the witness must be authenticated in the following form:

(1) It must state the name of the witness, his place of residence and his business or profession.

(2) It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and his answer thereto being corrected or added to until it conforms to what he declares is the truth; except that in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him.

(3) If a question put is objected to on either side and overruled, or the witness declines to answer it, that fact, with the ground on which the objection is overruled or the answer declined, must be stated.

(4) The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it, except that in cases where the deposition is taken down in shorthand it need not be signed by the witness.

(5) It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in shorthand the transcript of the stenographer appointed as aforesaid, when written out in longhand and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The stenographer shall, if the defendant is held to answer the charge, within ten days after the close of such examination, transcribe his shorthand notes

into longhand, and certify and file the same with the clerk of the district court of the county in which the defendant has been examined, and shall in all cases file his original notes with said clerk. The stenographer's fees shall be paid out of the treasury of the county."

The underlined portions are significant in that the magistrate is not required to employ a "certified shorthand reporter" as they are described in Title 78, Chapter 56, but is only authorized to appoint a "stenographer". Some significant sections of Title 78, Chapter 56, enacted after 1945 are the following:

"78-56-1.1. District Courts - Appointment. The court administrator shall appoint a certified shorthand reporter with the approval of the district judge to report the proceedings in each division of the district courts. The certified shorthand reporters shall hold office during the pleasure of the court administrator, and the district judge.

78-56-14. Definition of 'shorthand reporter.' The words 'shorthand reporter' as used in this act shall be defined to mean any person who is engaged in the practice of making by use of symbols or abbreviations a verbatim record of any trial, proceeding, or hearing before any district court or city court or before any referee, master, board, or commission of this state.

78-56-15. Appointment of reports - Eligibility - Departmental certificate. No person shall be appointed to the position of shorthand reporter or shall act in such capacity in any district court or city court of this state, or before any referee, master, board, or commission of this state unless he shall have received a certificate from the department of registration as provided herein."

Although Chapter 56 is entitled "Court Reporters and Stenographers" there appears to be no reference in the body of the statutes to "stenographers".

The definition of "shorthand reporter" in 78-56-14 would include Alan P. Smith as a classification, but it does not

necessarily include all persons who would qualify as a "stenographer" under 77-15-14 since some stenographers may not also be persons "who engage in the practice of making by use of symbols or abbreviations a verbatim record of any trial" Also, Title 78, Chapter 56, appears to cover proceedings in District Court and such proceedings in City Courts where the parties request the appointment of a shorthand reporter (78-56-10), but no direct reference is made to the "stenographer" serving upon order of a magistrate in preliminary examination.

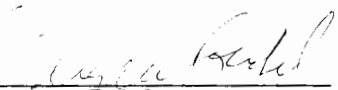
If the "stenographer" in 77-15-14 is not necessarily included under Title 78, Chapter 56, then the compensation for such stenographer should be based upon quantum meruit rather than the statutory compensation provided in Chapter 56, and thus could be more or less or the same as the statutory compensation stated in Chapter 56. Such items as furnishing of office space, supplies and travel time to a regularly employed court reporter, who is bound by statutory fee might not render the statutory fee as reasonable compensation in quantum meruit for one not so employed who is appointed by a magistrate to travel some distance and supply his own facilities in connection with lengthy proceedings.

CONCLUSION

The right to compensation of a "stenographer" appointed by a magistrate to serve in preliminary examinations under 77-15-14 is not dependent upon contract but is an entitlement under the said

statute, however, the amount of the compensation is not specifically provided by statute and should be determined by quantum meruit.

Respectfully submitted,



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