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

Utah Supreme Court

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George K. Fadel; Amicus Curiae;
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IN THE SUPREME COURT OF THE

STATE OF UTAH

ALAN P. SMITH,

Plaintiff-Appellant,

-vs-

JERIL B. WILSON, BRYCE K. BRYNER, and CARBON COUNTY, A Body Corporate and Politic.

Defendants-Respondents.

Case No. 15385

RESPONDENT'S BRIEF

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

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RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action to recover additional money from Respondents Wilson and Bryner or in the alternative to recover additional money from Respondent Carbon County, Utah, for services the Appellant rendered as a court reporter and for which Respondent Carbon County has already paid $1,753.93.

DISPOSITION MADE IN THE LOWER COURT

The trial court held in favor of the Respondents and dismissed Appellant's action with prejudice. No motion for new trial was made and from the court's decision the Appellant appeals.

RELIEF SOUGHT ON APPEAL

Respondents seek an order of this Court affirming the judgment rendered by the lower court.

STATEMENT OF FACTS

Appellants statement of facts is fairly accurate as to factual issues in that Respondents Wilson and Bryner were appointed to defend indigent defendants; that the Appellant did report the preliminary hearings; that the Appellant was not paid the $418.18 bill sent to Respondent Bryner and the Appellant was not paid the $418.18 bill sent to Respondent Wilson, and that payment of said bills was refused by Respondent Carbon County, Utah, as being unreasonable (Appellant's Statement of Facts).

Respondents do not agree with Appellants conclusions of law as set out in Appellant's Statement of Facts regarding the competency of evidence produced during trial and Respondents reserve comment on such matter for argument under POINT II of Respondent's brief.

Appellant has failed to set out the following additional facts in his brief:

1. The three preliminary hearings held in the single criminal case of The State of Utah vs. Gypsy Allen Codianna, Irvin Paul Dunsdon and Craig Marvel, Defendants referred to in Appellant's Brief, page 2, took only three and one-half

days (T.58 and R.16). Note: references to the trial transcript will be shown as (T._) and references to the Court's file record will be shown as (R._).

2. The Respondent Carbon County, Utah, paid the Appellant $1,753.93 (R.17; Def. Exhibits 1 & 2, and T.12,14) for three and one-half days work.

ARGUMENT

POINT I

THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE SUPPORTED BY THE PLEADINGS AND EVIDENCE ADDUCED AT TIME OF TRIAL IN THAT:

A. THERE WAS NO MEETING OF THE MINDS AS BETWEEN THE APPELLANTS AND THE RESPONDENTS UPON WHICH ANY CLAIMED OBLIGATION IN APPELLANT'S COMPLAINT COULD BE BASED

B. THE EVIDENCE PRODUCED AT TRIAL WAS DISJOINTED, SKETCHY AND INCOMPLETE

A. The Complaint of the Plaintiff-Appellant alleges that at the conclusion of each of the three preliminary hearings the Defendants-Respondents Wilson and Bryner each requested of the Plaintiff-Appellant a copy of each of the three preliminary hearings (R.2,3). At trial, Respondent Wilson disputed such claim when he testified that he did not make such a request (T.52). In fact, Respondent Wilson further testified that he was not even present at one of the preliminary hearings and that he was only present part of the time at another preliminary hearing (T.52). Appellant's own testimony was that Respondent Wilson was not present one day during the preliminary hearings (T.68).

Respondent Wilson testified at trial that the only discussion he had with the Appellant regarding payment of Appellant's bill concerned Carbon County making the payment (T.5). Appellant testified that at the end of the preliminary hearings Respondent Wilson stated that he was not certain if he wanted a copy of the transcript "because he did not have enough money to pay for one unless he was appointed by the County to represent his client" (T.46).

The Appellant knew that the indigent defendants had no money to pay for any transcripts. In fact, the Appellant testified that the substance of his conversations with Respondent Wilson was that "he (Wilson) was expecting to be appointed by Carbon County to represent him" and that "his client did not have the money to pay for a full transcript" and that nothing further was mentioned until Respondent Wilson was later appointed (T.47). Appellant's own testimony was that he prepared the transcript "on the supposition he (Wilson would be appointed" (T.67). Appellant's Complaint also shows that the Appellant knew that the Respondents were defending indigent defendants and that they had been appointed by the court (R.1,2). Clearly, the Appellant knew and understood that the indigent clients were not able to pay for any transcripts and that Carbon County would be paying any proper charges made on behalf of the indigent defendants.

Respondent Wilson informed the court and the Appellant during the preliminary hearings of the lack of funds of his client (T.49,50), and the Appellant testified that "my understanding was that Carbon County had hired these men to represent the indigents and that I bill the People that I understood would see that my, my invoices were paid, my bills were paid. If I had to look through the attorneys to Carbon County eventually paying on their behalf, I looked that way" (T.69).

Respondent Bryner testified that he never told the Appellant that he or his client would pay for the preliminary hearing transcripts (T.50), and Respondent Wilson testified that he also never told the Appellant that he or his client would pay for the preliminary hearing transcripts (T.74).

The above-cited testimony shows one thing very clearly and that is that there never was a clear understanding that Respondents Wilson or Bryner had ever obligated themselves to pay for any of the transcripts prepared for their indigent clients. The transcript of the trial is completely void of any understanding of what Carbon County was obligated to pay for the preliminary hearing transcripts. Therefore, the findings of the lower court that the Plaintiff-Appellant did not persuade the court that there was a meeting of the minds in their dealings was a proper and reasonable finding (R.17), and this court should assume that the trial court believed

those aspects of evidence which support its findings and judgment and should survey the evidence in the light that is favorable thereto as this court has already ruled in Tates, Inc. v. Little America, 535 P.2d 1228, (1975).

B. Although the Appellant claimed that the charges made were reasonable, he never offered any proof or testimony of what was reasonable or if the charges actually made were reasonable.

Without any evidence of reasonableness of the charges, the court properly observed that the evidence produced was "disjointed, sketchy and incomplete" (R.17). See POINT II for further argument on the failure of the Appellant to produce any evidence to show that any charges were reasonable.

POINT II

NO EVIDENCE WAS PRESENTED TO SUPPORT APPELLANT'S ALLEGATIONS THAT THE CHARGES MADE WERE REASONABLE

The allegations in Plaintiff-Appellant's Complaint were that the charges made were reasonable (R.1,3). Not once during the trial did the appellant ever state that his charges were reasonable nor did any other witness state that the charges were reasonable. Respondent Wilson and Respondent Bryner both testified that they did not know if the charges were reasonable and further stated that they were satisfied with their answer (R.6,7) which denies that the charges were reasonable.

When the Appellant was questioned on cross examination about his charges, he made it quite clear that he was not bound by statutory charges (T.38) and he also stated that

"there had never been any obligation on the part of any reporter to follow any charges of any other reporter" (T.32).

Appellant's testimony was that he had hired another court reporter as his replacement to stand in for him while he was away for $55 to $60 per day, and he also testified that his salary (Appellant's) at that time was between $1,200.00 and $1,400.00 a month (T.59). For the time spent in Carbon County, Appellant was expecting to make approximately $750.00 per day ($1,335.75 --Def. Ex. 2 -- plus $418.18 --Def Ex. 1 -- plus $418.18 -- Pl. Ex. 3 -- plus $418.18 -- Pl. Ex. 4 -- = $2,590.29. Mere common sense would dictate that such charges for three and one-half days work was not reasonable. Even the $1,753.93 which Carbon County paid streaches the imagination of the most causual observer.

Without any evidence being produced to show that the Appellant's charges were reasonable or that the $1,753.93 actually paid to the Appellant by Carbon County was less than reasonable, the lower court correctly observed that the evidence was disjointed, sketchy and concomplete (R.17).

POINT III

RESPONDENTS WILSON AND BRYNER WERE NOT LIABLE TO PAY FOR THE TRANSCRIPTS PREPARED FOR THEIR INDIGENT CLIENTS

Appellant has alleged in his brief that an attorney is personally liable for stenographic expenses incurred in relation to services for his client even though there was no explicit agreement with the stenographer for payment and

he cites Burt v. Gahan, 220 NE 2d 817, for authority (Appellant's brief page 5). Although appellant admits that there is a contrary view to the above cited case, appellant fails to point out to the court some very important distinctions between the Burt case and the instant one. For example, in Burt the defendant requested that the reporter's bill be sent to him; the sum due and owing was stipulated to at the outset of trial between the parties as a fair and reasonable charge for the services done; and the court went on to say that the attorney could exclude himself from liability by a statement to that effect. In the present case, neither Respondent Wils or Respondent Bryner ever requested that the Appellant's bill be sent to them; there never was an agreement as to the value or reasonableness of the Appellant's services, and the Respondents made it perfectly clear at the outset that Carbon County and not they were liable for any charges billed by the Appellant for transcripts prepared for their indigent clients, and the Appellant knew that he was looking to Carbon County for payment.

It should be pointed out that the Burt case was a civil case involving an attorney who represented a client by choice as opposed to the referred to criminal case where counsel was appointed by court to represent indigents.

Appellant's own brief refers at length to Chapter 64, Counsel for Indigent Defendants, U.C.A., 1953, as amended at Sections 77-64-1,-3, and -5 in support of Appellant's argume

that Carbon County is liable for transcripts supplied indigent defendants. Such reliance only confirms Respondent's argument that the Appellant was actually looking to Carbon County for payment of Appellant's charges and that the Appellant never did actually look to Respondents Wilson and Bryner.

POINT IV

CARBON COUNTY WAS OBLIGATED TO PAY ONLY REASONABLE CHARGES FOR NECESSARY TRANSCRIPTS FURNISHED BY THE APPELLANT

Appellant cites Chapter 64, Counsel for Indigent Defendants, U.C.A., 1953, as amended, as authority that Carbon County was liable for expenses of transcripts (Appellant's brief p. 5). Section 77-64-5, U.C.A., 1953, as amended, merely states that transcripts are a proper county charge. Reason dictates that Carbon County would not be liable for unreasonable or excessive charges. Carbon County never tried to avoid its duty in this matter and actually paid $1,753.93 to the Appellant for his services.

CONCLUSION

The finding by the lower court that the evidence produced at trial was disjointed, sketchy and incomplete is supported by the record and exhibits now before this court. Not only did the Appellant fail to show that there was any understanding of what charges were to be made for his services at the discussed criminal preliminary hearings, but the Appellant has failed completely to show that the charges he made were reason-

able. This court should not second guess the lower court's determination of the facts presented. Without sufficient evidence or facts before the lower court to allow that court to find for the Appellant, the court could make no other findings.

Respectfully submitted,

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